

**RACING TO REGULATE:
EPA'S LATEST OVERREACH ON AMATEUR DRIVERS**

HEARING
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON SCIENCE, SPACE, AND
TECHNOLOGY
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

March 15, 2016

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**RACING TO REGULATE:
EPA'S LATEST OVERREACH ON AMATEUR
DRIVERS**

TUESDAY, MARCH 15, 2016

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY,
Washington, D.C.

The Subcommittee met, pursuant to call, at 10:15 a.m., in Room 2318 of the Rayburn House Office Building, Hon. Barry Loudermilk [Chairman of the Subcommittee] presiding.

LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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Subcommittee on Oversight

Racing to Regulate: The EPA's Latest Overreach on Amateur Drivers

Tuesday, March 16, 2016

10:00 a.m.

2318 Rayburn House Office Building

Witnesses

The Honorable Patrick McHenry, Member, U.S. House of Representatives

Mr. Christopher Kersting, President and CEO, Specialty Equipment Marketing Association

Mr. Ralph Sheheen, Managing Partner and President, National Speed Sports News

Mr. Brent Yacobucci, Section Research Manager, Energy and Minerals Section, Congressional Research Service

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY
SUBCOMMITTEE ON OVERSIGHT**

HEARING CHARTER

Racing to Regulate: EPA's Latest Overreach on Amateur Drivers

Tuesday, March 15, 2016
10:00 a.m. – 12:00 p.m.
2318 Rayburn House Office Building

PURPOSE

The Subcommittee on Oversight will hold a hearing entitled *Racing to Regulate: EPA's Latest Overreach on Amateur Drivers* on Tuesday, March 15, 2016, in Room 2318 of the Rayburn House Office Building. The hearing will examine the scientific underpinnings and the technological and economic impact of the U.S. Environmental Protection Agency's (EPA) decision to enforce the Clean Air Act on those who modify nonroad vehicles (legally deregistered vehicles) for the purpose of using them in racing competitions.

WITNESS LIST

First Panel

- **The Honorable Patrick McHenry**, Member, U.S. House of Representatives

Second Panel

- **Mr. Christopher Kersting**, President and CEO, Specialty Equipment Marketing Association
- **Mr. Ralph Sheheen**, Managing Partner and President, National Speed Sport News
- **Mr. Brent Yacobucci**, Section Research Manager, Energy and Minerals Section, Congressional Research Service

BACKGROUND

On July 13, 2015, EPA and the National Highway Traffic Safety Administration issued a proposed rule for Phase 2 Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles.¹ Within this proposed rule, EPA included a miscellaneous change to regulations applicable to highway vehicles currently in use and not specifically limited to medium and heavy duty vehicles. The provision would bring nonroad vehicles modified to be racecars under the jurisdiction of the Clean Air Act. Stakeholders have

¹ Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2 Proposed Rule, 80 Fed. Reg. 40,137 (July 13, 2015).

claimed they were not given proper notice of this proposed change despite regular meetings with EPA on a host of issues. EPA's proposed language specifically states:

Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely for competition or if they become nonroad vehicles or engines.²

Stakeholder groups, such as the Specialty Equipment Market Association, have stated that this proposed language contravenes Congress' intent that the Clean Air Act not apply to nonroad vehicles modified for the purpose of racing competitions.³ According to the legislative history, the Clean Air Act amendments of 1990 specifically excluded these racecars from the statute's jurisdiction. However, EPA claims that the agency is merely clarifying long standing agency policy that the agency does have the authority to enforce the Clean Air Act on nonroad vehicles used in competition.⁴

On March 2, 2016, EPA released a Notice of Data Availability for the Heavy-Duty Engine rule soliciting additional comments on the racecar rule.⁵ However, EPA did not provide any further information for this provision within the Federal Register, such as an economic analysis, regulatory flexibility analysis, or Small Business Regulatory Fairness Enforcement Act analysis. At no point in the rulemaking process has EPA provided any scientific basis for the need to clarify its Clean Air Act authority for racecars. The comment period for this provision closes on April 1, 2016.

On March 7, 2016, Chief Deputy Whip Patrick McHenry (R-NC) introduced H.R. 4715, the Recognizing the Protection of Motorsports Act of 2016.⁶ This bill would codify within the Clean Air Act the exclusion of vehicles modified for the purpose of racing competition from the statute.⁷

² *Id.*

³ Specialty Equipment Market Association, Comments: Proposed Rule: Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles Phase 2: Vehicles Used Solely in Competition, Dec. 28, 2015.

⁴ Ryan Beene, "EPA, SEMA at Odds Over Proposed Racecar Rule," AutoNews, Feb. 9, 2016, available at <http://www.autonews.com/article/20160209/OEM10/160209811/epa-sema-at-odds-over-proposed-racecar-rule>.

⁵ Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2 –Notice of Data Availability, 81 Fed. Reg. 10,822 (Mar. 2, 2016).

⁶ Press Release, *McHenry Introduces RPM Act*, Mar. 8, 2016.

⁷ *Id.*

Chairman LOUDERMILK. The Subcommittee on Oversight will come to order.

Without objection, the Chair is authorized to declare recesses of the Subcommittee at any time.

Welcome to today's hearing titled "Racing to Regulate: EPA's Latest Overreach on Amateur Drivers." I recognize myself for five minutes for an opening statement.

Good morning. Today's hearing is an examination of the EPA's efforts to use the Clean Air Act to regulate amateur racecars, which is yet another example of EPA regulatory overreach. In this case, the EPA is attempting to enforce the Clean Air Act in a way that Congress never intended, and is doing so in a covert manner.

Earlier this year, the EPA issued a proposed rule to establish greenhouse gas and fuel consumption regulations for new on-road medium- and heavy-duty trucks. Hidden within the 629-page proposed rule on page 584, in the miscellaneous section, is a sentence that states: "Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely for competition or if they become non-road vehicles or engines." The impact of that sentence cannot be understated. The proposed regulation would affect any vehicle used for racing that started as a street or production car.

Racecars are fast and have been modified to be fast and safe. As a result, racecars strictly used at the track are not typically emissions compliant. Any racecar that has a VIN plate, installed at the factory, can no longer be out of compliance under this proposed rule. This applies to racecars used strictly at drag strips, oval tracks, and other types of racing, with no intention of ever seeing the open road again.

The proposed regulation would have a devastating effect on the motorsports industry and the industry that supplies the products, technology, and services for the racing community. The specialty equipment automotive aftermarket employs over one million Americans across the nation representing nearly \$1.4 billion in sales of racing-related products annually.

In my home State of Georgia, the Atlanta Motor Speedway contributes \$455 million a year to the Atlanta economy. The South Georgia Motorsports Park located in Cecil, Georgia, attracts over 200,000 people a year, generating an estimated \$37 million into the economy of South Georgia.

In addition to the major raceways throughout our country, there are thousands of local tracks that would be devastated by this new regulation. For example, the Dixie Speedway in my district in Woodstock, Georgia, is a popular community track that brings in 150,000 visitors and generates more than \$40 million in economic activity every year. If the EPA uses this regulation to dismantle the race equipment manufacturing industry, drivers at tracks like these would be unable to find many of the parts that they need for their racecars. If the Dixie Speedway was to go out of business, our community would lose tremendous amounts of commercial activity, tourism, and recreation that have been part of our local economy and culture since the Speedway opened in 1968.

What is most frustrating to me is the secretive manner that the EPA attempted to sneak in this clarification of authority. They de-

liberatively did this under the radar of the American people. The EPA violated the Administrative Procedures Act requiring adequate opportunity for the public and interested parties to comment on proposed rules. There was no mention of this significant policy change in the table of contents of the 629-page rule. It was included with other minor issues in Section 14, Other Proposed Regulatory Provisions.

The proposed rule establishes next-generation greenhouse gas emissions standards for medium- and heavy-duty engines and vehicles. The inclusion of an unrelated topic within a series of rulemakings is unprecedented and non-germane. The EPA is seeking to change policy that has been in place for decades and does not explain the purpose for changing language to prohibit racecars from being emissions noncompliant.

To change policy without proper notice would likely be arbitrary, capricious, and in violation of the Administrative Procedures Act. EPA failed to provide any notice to the regulated industry in this case.

To date, millions of cars have been modified to be used strictly at the race track. Products have been manufactured and installed on race-only vehicles since the automobile was invented.

Automotive racing is part of the soul of this country. It is our responsibility to shine a light on the EPA's attempt to eliminate a part of who we are as a nation with one sentence in an unrelated rule.

I thank the witnesses for being here today, particularly Mr. McHenry, who introduced H.R. 4715, which clarifies the intent of Congress in the Clean Air Act to exclude vehicles used solely for competition. Mr. McHenry, we appreciate your leadership on this important issue.

[The prepared statement of Chairman Loudermilk follows:]

**U.S. House of Representatives
Committee on Science, Space, and Technology
Subcommittee on Oversight**

"Racing to Regulate: EPA's Latest Overreach on Amateur Drivers"

Tuesday, 10:00 a.m., March 15, 2016

Statement by Chairman Barry Loudermilk

Good morning.

Today's hearing is an examination of the EPA's effort to use the Clean Air Act to regulate amateur racecars. This is yet another example of EPA regulatory overreach. In this case, the EPA is attempting to enforce the Clean Air Act in a way that Congress never intended, and is doing so in a covert manner.

Earlier this year the EPA issued a proposed rule to establish greenhouse gas and fuel consumption regulations for new on-road medium and heavy-duty trucks. Hidden within the 629 page proposed rule on page 584, in the miscellaneous section is a sentence that states:

"Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely for competition or if they become nonroad vehicles or engines."

The impact of that sentence cannot be understated. The proposed regulation would affect any vehicle used for racing that started its life as a street or production car. Race cars are fast and have been modified to be fast and safe. As a result, race cars strictly used at the track are not typically emissions compliant. Any race car that has a VIN plate, installed at the factory, can no longer be out of compliance under this proposed rule. This applies to race cars used strictly at drag strips, oval tracks, and other types of racing, with no intention of ever seeing the open road again.

The proposed regulation would have a devastating effect on the motorsports industry and the industry that supplies the products, technology, and services for the racing community. The specialty equipment automotive aftermarket employs over one million Americans across the nation representing nearly \$1.4 billion in sales of racing related products annually. In my home state of Georgia, the Atlanta Motor Speedway contributes \$455 million annually to the Atlanta

economy. The South Georgia Motorsports Park located in Cecil, Georgia attracts over 200,000 people a year generating an estimated \$37 million into the economy of South Georgia.

[Insert paragraph about BL home town dirt track]

What is most frustrating to me is the secretive manner that the EPA attempted to sneak in this clarification of authority – they deliberatively did this under the radar of the American people. The EPA violated the Administrative Procedures Act requiring adequate opportunity for the public and interested parties to comment on proposed rules. There was no mention of this significant policy change in the table of contents of the 629 page rule. It was included with other minor issues in “Section 14. Other Proposed Regulatory Provisions”.

The proposed rule establishes next generation greenhouse gas emissions standards for medium and heavy-duty engines and vehicles. The inclusion of an unrelated topic within a series of rule makings is unprecedented and non-germane. The EPA is seeking to change policy that has been in place for decades and does not explain the purpose for changing language to prohibit racecars from being emissions non-compliant. To change policy without proper notice would likely be arbitrary, capricious, and in violation of the Administrative Procedures Act. EPA failed to provide any notice to the regulated industry in this case.

To date, millions of cars have been modified to be used strictly at the race track. Products have been manufactured and installed on race-only vehicles since the automobile was invented. Automotive racing is part of the soul of this country. It is our responsibility to shine a light on the EPA’s attempt to eliminate a part of who we are as a nation with one sentence in an unrelated rule. I thank the witnesses for being here today especially Mr. McHenry who introduced HR 4715 which clarifies the congressional intent of the Clean Air Act by excluding vehicles used solely for competition. Mr. McHenry we appreciate you being here today and your leadership on this important issue. And with that I recognize the ranking member.

Chairman LOUDERMILK. With that, I recognize the Ranking Member for his opening statement.

Mr. BEYER. Thank you, Chairman Loudermilk. I appreciate your holding this hearing today.

While I admit the title of this hearing, "Racing to Regulate," is catchy, I really don't think the Environmental Protection Agency has been racing ahead to apply a 40-year-old provision of the Clean Air Act, and I don't think the EPA has attempted to throttle amateur drivers. In 46 years of enforcing the Clean Air Act, the agency has never targeted racecar drivers, and, I don't believe the EPA's intent in clarifying the legal authority of these regulations last July suggests that they're going to begin to do that today, in spite of what the hearing title suggests.

I too have great empathy for the racing community. I've been a racecar enthusiast my whole life. I have pictures of my father racing on the beach at Daytona and my mother, because her brother was on the same racing team. I grew up going to stock car races at Darlington and Dover and Bristol and Richmond, and Manassas, especially, and I ran the family's SCCA racing teams in the 1980s. By the way, I checked last night. I am proud of my family relationship with Alexander Rossi, who is the first person ever, American or otherwise, to have both an IndyCar ride and a Formula 1 ride in the same season. Let's hope he wins.

But the public health benefits of the 1970 Clean Air Act are clear, and the EPA enforcement actions against those that violate these laws are necessary. According to the Centers for Disease Control and Prevention, these regulations have resulted in 11,000 fewer deaths due to reduced vehicle emissions of carbon monoxide. Efforts to violate these regulations willfully have serious environmental consequences.

I understand, of course, that the EPA's recent clarification of their jurisdictional authority under the Clean Air Act has sparked widespread concern within the racing industry.

EPA had been called to witness—they were not called today, which is a disadvantage, because in reading a lot of the EPA stuff, I understand that this has been their interpretation the entire 40-plus years. Hopefully through our witness from the Congressional Research Service we'll be able to get the EPA's perspective.

But we all have a shared interest in preventing companies from manufacturing, selling or installing aftermarket automobile parts that result in illegally modified automobiles or trucks, not on racecar tracks but in our neighborhoods. Think "Fast and Furious 1, 2, 3, 4, 6, 7."

The EPA has attempted to focus their enforcement actions on those who violate motor vehicle emissions laws by targeting manufacturers, sellers, and installers of aftermarket parts that are used to turn motor vehicles into hotrods used on public roads and highways. Since 2007 the EPA has had three large enforcement actions against enforcement manufacturers—aftermarket manufacturers who have sold a total of 167,000 products intended to violate environmental regulations. Unsurprisingly, amateur racing continues after each of these actions unaffected by the EPA's actions.

Now, the issue here of course is not NASCAR, it is not IndyCar. The issues don't affect them at all. And the EPA is intending sim-

ply to clarify environmental regulations that make it illegal to decertify a motor vehicle and alter vehicles' emissions control in violation of the law, and I presume, for instance, that no one here condones what is known as "coal rolling" or "rolling coal," which is the process of altering a vehicle's exhaust to intentionally emit heavy black clouds of smoke as the vehicle rolls down the highway, suburban street, or other roadway.

But we clearly have a problem, Mr. Chairman. EPA's 46-year-old interpretation of the Clean Air Act and its clarification this year is that we cannot ever modify the emissions system of a vehicle initially certified for use on public roads, and this of course makes no sense, and it's not the way EPA has applied the rule: no enforcement against amateur racecar drivers ever, and none intended in the future.

So let me point out, there are many, many, many more amateur racecars and racecar drivers than there are those represented by NASCAR's top level or IndyCar across the country in thousands of counties, amateur races on Friday and Saturday nights. It's bad for the rule of law and for our understanding as law-abiding citizens to have laws or regulations on the books that we do not enforce, and it is hard to believe that this is ever the intention of Congress to ban amateur racing.

So I look forward to listening to Mr. McHenry's testimony about his legislation and from our witnesses today.

I yield back, Mr. Chairman.

[The prepared statement of Mr. Beyer follows:]

PREPARED STATEMENT OF SUBCOMMITTEE ON OVERSIGHT RANKING MEMBER DON BEYER

Thank you Chairman Loudermilk. I appreciate you holding this hearing today.

While I admit the title of this hearing, "Racing to Regulate" is catchy, I don't think the Environmental Protection Agency (EPA) has been racing ahead in applying forty year old provisions of the Clean Air Act, nor do I think EPA has attempted to throttle amateur drivers at all. In 46 years of enforcing the Clean Air Act, the agency has never targeted racecar drivers per se, and, I don't believe the EPA's intent in clarifying the legal authority of these regulations last July suggests that they will begin to do that today, in spite of what the hearing title suggests.

I have great empathy for both the racing community and the automotive industry and its partners. I have been a racing car enthusiast my entire life. My father was a founding member of NASCAR. I have made my living running my family's automobile dealership. But I strongly believe that individuals, as well as the automotive industry, must comply with established environmental laws whether they agree with them or not.

The public health benefits of the 1970 Clean Air Act (CAA) regulations are clear and the EPA's enforcement actions against those that violate these laws are necessary. According to the Centers for Disease Control and Prevention (CDC) these regulations have resulted in more than 11,000 fewer deaths due to reduced vehicle emissions of carbon monoxide (CO), for instance. Efforts to violate these regulations have serious environmental consequences.

I understand that EPA's recent clarification of their jurisdictional authority under the Clean Air Act has sparked widespread concern within the racing industry. Of course if the EPA had been called as a witness to this hearing they could respond to questions about this issue themselves. Instead, our witnesses and our Members will be left to engage in conjecture about EPA's intent.

We all have a shared interest in preventing companies from manufacturing, selling or installing aftermarket automobile parts that result in illegally modified automobiles or trucks that speed loudly through our neighborhoods, endangering residents and polluting our streets. I believe the Specialty Equipment Market Association (SEMA), which represents the automotive specialty and performance parts industry, agrees with that position and so does the EPA.

The EPA has attempted to maximize their enforcement actions against those who violate motor vehicle emissions laws by targeting manufacturers, sellers, and installers of aftermarket parts that are used to turn motor vehicles into racecars that are used on public roads and highways. Since 2007 the EPA has had three large enforcement cases against aftermarket manufacturers who have sold a total of 167,000 products intended to violate environmental regulations.

Unsurprisingly, amateur racing continued after each of these actions unaffected by the EPA's enforcement actions.

This is why I believe it is clear that we share the same objectives: to protect the environment and the public's health while maintaining the nation's rich racing tradition in a safe and responsible manner. No one, including the EPA, is attempting to shut down the Daytona 500 or other professional races. Under the Clean Air Act NASCAR and other professional racecars are not "motor vehicles" by definition and have been exempt from complying with EPA emissions control regulations. The issues we are discussing today will not impact these professional racecars or racers in any way. EPA is intending to simply clarify environmental regulations that make it illegal to de-certify a motor vehicle and alter a vehicle's emissions control devices in violation of the law.

I presume, for instance, that no one here condones what is known as "coal rolling," or "rolling coal," which is the process of altering a vehicle's exhaust to intentionally emit heavy black clouds of smoke as the vehicle rolls down the highway, suburban street, or other roadway.

Lastly, while I find this discussion interesting I am not sure any of the issues we are discussing today fall within the jurisdiction of the Science Committee. I am also disappointed that the Majority chose not to invite any representative from the EPA as a witness today to actually help us understand their perspective on the history of their enforcement in this area and the intent of their clarification on this issue last July.

Thank you Mr. Chairman. I yield back.

Chairman LOUDERMILK. Thank you, Mr. Beyer.

I now recognize the Chairman of the full Committee, Mr. Smith.

Chairman SMITH. Thank you, Mr. Chairman.

The Science Committee has held many hearings on the regulatory overreach of the Environmental Protection Agency during this Administration. Unfortunately, the EPA once again now attempts to unnecessarily and unlawfully regulate the lives of the American people.

The Committee has often revealed how the EPA's regulatory overreach will cost billions of dollars, cause financial hardship for American families, and diminish the competitiveness of American employers, all with no significant benefit to climate change, public health, or the economy.

The EPA has rushed through many costly and burdensome regulations throughout this administration. Examples include the strict new National Ambient Air Quality standard for ozone, Waters of the U.S., and the Clean Power Plan.

Today, we will hear about how the EPA wants to expand its Clean Air Act authority and enforce it against amateur racecar drivers in the industry that supplies amateur racers with parts and modifications. This is an industry that supports American small business jobs, manufacturing, and technology.

For the first time, the EPA seeks to impose the Clean Air Act on all non-road vehicles used for racing competitions. This includes vehicles that have been legally deregistered so they can be modified for use in racing. Congress never intended the Clean Air Act to apply to these vehicles, and the law is clear on this point. Racecars are not regulated by this law. However, EPA has now put into question the legality of non-road vehicles modified to become racecars.

The EPA's proposed expansion of authority demonstrates the agency's willingness to resort to backdoor and secretive means to push its agenda. Agency officials buried this new provision in a proposed rule on emissions standards for medium- and heavy-duty truck, a regulation that is unrelated to vehicles modified for racing. In fact, it took industry stakeholders beyond the official comment period to discover that the EPA had even included this provision in the rule.

EPA's actions show that the agency acted in an arbitrary and capricious manner, in violation of the Administrative Procedures Act, because the agency failed to give proper notice to the stakeholders that would be affected by this provision.

Even EPA Administrator Gina McCarthy herself seemed to be caught off guard by her own agency's latest power grab. In a hearing before the House Agriculture Committee, Administrator McCarthy correctly asserted that EPA does not have Clean Air Act authority over non-road vehicles modified for competition. If the Administrator agrees that the agency does not have this authority, then why would the EPA even propose this rule?

This regulation of competition vehicles will have a devastating impact on amateur racers and the manufacturers that produce components for this industry. NASCAR is one of the most popular spectator sports in the country with over 75 million fans. Amateur racers are often the minor leagues for NASCAR drivers. Nearly all businesses that manufacture components for this industry could become the subject of enforcement actions by the EPA. This overreach has the potential to result in billions of dollars in enforcement penalties simply for the production of items that have been legally used by amateur racers for years. It will stifle technological advances in this field and cause the loss of many American jobs.

Mr. Chairman, it is a pleasure to welcome the Deputy Majority Whip Patrick McHenry to today's hearing, and I thought members of this Committee might be interested in knowing, as I just learned a few minutes ago, that Congressman McHenry actually was an intern for the Science Committee in the summer of 1995. So on those grounds, I think he should be made an honorary member today and always welcomed to this Committee's procedures.

Mr. MCHENRY. I'm honored.

Chairman SMITH. Last week, Representative McHenry introduced H.R. 4715, the Recognizing the Protection of Motorsports Act of 2016. This bill would prevent the EPA from taking action on amateur racing under the Clean Air Act. I support Representative McHenry's efforts to assist amateur racers and the industry, technology and jobs that rely on them.

As we have seen countless times, EPA's regulatory agenda is bad for the American economy and for the American people. We simply cannot allow a federal agency to assume power that Congress has not given it. The Science Committee will continue to rein in the EPA when it oversteps its authority. There is no public scientific justification presented for this regulation. Contrary to the EPA's agenda, Americans want to be free from overly burdensome regulations, not tied up in more.

Thank you, Mr. Chairman, and I yield back.

[The prepared statement of Chairman Smith follows:]

Statement of Science Committee Chairman Lamar Smith
Oversight Subcommittee Hearing on
*Racing to Regulate: EPA's Latest Overreach on Amateur
Drivers*
10:00 a.m. Tuesday, March 15, 2016

The Science Committee has held many hearings on the regulatory overreach of the Environmental Protection Agency (EPA) during this administration.

Unfortunately, the EPA once again now attempts to unnecessarily and unlawfully regulate the lives of the American people.

The Committee has often revealed how the EPA's regulatory overreach will cost billions of dollars, cause financial hardship for American families, and diminish the competitiveness of American employers, all with no significant benefit to climate change, public health, or the economy.

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For the first time, the EPA seeks to impose the Clean Air Act on all non-road vehicles used for racing competitions. This includes vehicles that have been legally de-registered so they can be modified for use in racing.

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This overreach has the potential to result in billions of dollars in enforcement penalties simply for the production of items that have been legally used by amateur racers for years. It will stifle technological advances in this field and cause the loss of many American jobs.

It is a pleasure to welcome the Deputy Majority Whip Patrick McHenry to today's hearing.

Last week, Rep. McHenry introduced H.R. 4715, the Recognizing the Protection of Motorsports Act of 2016. This bill would prevent the EPA from taking action on amateur racing under the Clean Air Act. I support Rep. McHenry's efforts to assist amateur racers and the industry, technology and jobs that rely on them.

As we have seen countless times, EPA's regulatory agenda is bad for the American economy and for the American people. We cannot allow a federal agency to assume power that Congress has not given it.

The Science Committee will continue to rein in the EPA when it oversteps its authority. There is no public scientific justification presented for this regulation. Contrary to the EPA's agenda, Americans want to be free from overly burdensome regulations, not tied up in more.

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Chairman LOUDERMILK. Thank you, Mr. Chairman.

The Chair now recognizes the Ranking Member of the Full Committee, Ms. Johnson, for a statement.

Ms. JOHNSON. Thank you very much, Mr. Chairman.

I am a strong supporter of the Clean Air Act Amendments that went into effect in 1970 during a Republican Presidential Administration. Those federal regulations have saved many thousands of lives, removed tons of toxic contaminants from our environment, and continue to have a positive impact on the everyday lives of our citizens. They also include key provisions regarding the regulation of motor vehicles' emission control devices, which is at the heart of the issue we are discussing today.

It seems that the Environmental Protection Agency's clarification of these provisions last July generated a lot of interest in the racing car and aftermarket car parts industries. They feared this was a new rule that was seeking to expand EPA authority under the Clean Air Act and would result in EPA enforcement actions against individual drivers and racecars. However, the language of the law has not changed, and the EPA has tried to make clear that last July's statement was simply a clarification of existing law. EPA has also said that they have never attempted to enforce these provisions by going after individuals and that they do not plan to do so in the future.

It is unclear to me that this hearing would even have been necessary if the Majority had even reached out to EPA for information on this issue prior to calling this hearing. For reasons known only to them, the Majority did not seek a briefing from EPA on this topic and the Majority did not ask the EPA to testify at this hearing. While the Majority has said that this hearing is supposed to examine the scientific underpinnings of the EPA decision to enforce the Clean Air Act, the Majority also chose not to invite any scientists to this hearing. Instead, they invited the president of the industry trade group that is engaged in a public dispute with the EPA over this issue and a race announcer, who has a right to advocate his views, but is certainly not a scientist.

Mr. Chairman, whether you agree with the EPA's position on this issue or not, I would have hoped that you would have wanted to understand the views of the agency that you are castigating in public and alleging once again has engaged in regulatory overreach. As the Ranking Member of the Science Committee, I wish that we would routinely attempt to actually understand the issues we look into fully from all perspectives before we offer sweeping condemnation, or support of legislation, on issues or agency actions. That does not appear to be the path the Majority has chosen to follow today, and as such, it is just another missed opportunity for responsible oversight.

Thank you, and I yield back.

[The prepared statement of Ms. Johnson follows:]

PREPARED STATEMENT OF FULL COMMITTEE RANKING MEMBER

EDDIE BERNICE JOHNSON

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eral regulations have saved many thousands of lives, removed tons of toxic contaminants from our environment, and continue to have a positive impact on the everyday lives of our citizens. They also include key provisions regarding the regulation of motor vehicles' emission control devices, which is at the heart of the issue we are discussing today.

It seems the Environmental Protection Agency's (EPA's) clarification of these provisions last July generated a lot of interest in the racing car and aftermarket car parts industries. They feared this was a new rule that was seeking to expand EPA authority under the Clean Air Act and would result in EPA enforcement actions against individual drivers and racecars. However, the language of the law has not changed, and the EPA has tried to make clear that last July's statement was simply a clarification of existing law. EPA has also said that they have never attempted to enforce these provisions by going after individuals and that they do not plan to do so in the future.

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Mr. Chairman, whether you agree with the EPA position on this issue or not, I would have hoped that you would have wanted to understand the views of the Agency that you are castigating in public and alleging—once again—has engaged in regulatory overreach.

As the Ranking Member of the Science Committee, I wish that we would routinely attempt to actually understand the issues we look into fully - from all perspectives - before we offer sweeping condemnation, or support of legislation, on issues or agency actions. That does not appear to be the path the Majority has chosen to follow today. As such, it is another missed opportunity for responsible oversight.

Thank you. I yield back.

Chairman LOUDERMILK. The gentlewoman yields back, and I'd like to remind all of the members of our hearing today, today is an initial hearing to hear from stakeholders who are clearly being affected by this EPA proposal, and I think it's important that we hear from those who are being affected. Unfortunately, the Minority has decided to attack the Majority on this, but I think it's important that we work together to actually hear from the stakeholders, hear from those, and the Minority had every right to invite the EPA to today's hearing. I would ask the Ranking Member if you did invite the EPA, if not—

Ms. JOHNSON. Mr. Chairman, we had no opportunity. As you know, we are very limited as the Minority as to what we can do with witnesses. If we had been offered the opportunity, we would have taken it.

Chairman LOUDERMILK. Well, the Ranking Member will be reminded that you can invite any witness to any hearing that you so deem necessary, and you have a right to do that.

Ms. JOHNSON. But could you put that in the rules so that we can utilize that?

Chairman LOUDERMILK. Well, I think it's been utilized in many of our hearings that we've had in the past.

Ms. JOHNSON. Not the ones I've been involved in, and I've been involved 24 years.

Chairman LOUDERMILK. And I am advised it is in the rules, and I do believe that you do have a witness here today that you invited to attend.

Ms. JOHNSON. I'm not aware of that, but please, if we do, I wish EPA was represented since they're being attacked.

Chairman LOUDERMILK. Let me introduce our witness, the Honorable Patrick McHenry. Our witness today on our first panel is the Honorable Patrick McHenry, Chief Deputy Majority Whip, and former Chairman of the House Financial Services Committee's Oversight and Investigations Subcommittee. Congressman McHenry represents the 10th District of North Carolina, a state which is definitely well known for its support of motorsports, and we really appreciate North Carolina being the headquarters of NASCAR, and for all they've done for the great American tradition of stock car racing.

Congressman McHenry is the sponsor of H.R. 4715, the RPM Act, which I am cosponsoring, and his bill will be part of the discussion in this hearing. We thank him for being here this morning and look forward to hearing about his experiences with this issue.

I now recognize Congressman McHenry for five minutes to present his testimony.

**TESTIMONY OF HON. PATRICK MCHENRY,
MEMBER, U.S. HOUSE OF REPRESENTATIVES**

Mr. MCHENRY. Thank you, Mr. Loudermilk. I thank you, Chairman Loudermilk, thank you, Chairman Smith, Ranking Member Beyer, Ranking Member Johnson. Thank you for having me here today. It's an honor to speak before this great Committee. It's truly an honor personally to be back before the Committee, as the Full Committee Chairman said.

I represent an area of North Carolina that has a rich history of supporting and participating in motorsports. From amateur weekend racers to NASCAR drivers, motorsports plays a vital role in western North Carolina's economy and recreational activities. Many communities in my district and across the country have race-tracks that provide an outlet for motorsports enthusiasts, both competitors and fans alike.

The EPA recently issued a proposed rule that makes it illegal to convert a vehicle if its emission system is modified and taken out of compliance from its stock configuration. The EPA made this rule with little input from the affected motorsports stakeholders, catching many of them by surprise. Mr. Chairman, this is no way for an agency to regulate, and certainly not in keeping with American tradition of jurisprudence.

While the Clean Air Act does authorize the government to regulate the emissions of vehicles, Congress never intended for the EPA to regulate vehicles that are modified for use on racetracks.

In 1990, Congress affirmed this exemption when it authorized the EPA to regulate non-road vehicles and explicitly excluded any "vehicles used solely for competition" from the non-road definition. While the law has not changed, what the regulations put forward by the EPA state are dramatically different with the keeping of the last 40 years of regulatory environment. That is in fact the case. That's why we're here today, is the plain text of the regulation goes counter to the Congressional intent of a Democrat House and a Democrat Senate Majority as well as a Republican President that signed that into law. This is bipartisan legislation, and we're de-

fending the law against regulatory overreach. That's the nature of the reason why I'm here, to defend those enthusiasts that wish to continue to practice their competitive outlets.

This new regulation will prohibit responsible, law-abiding people who wish to modify their cars for racing on closed tracks from doing so. The federal government has no place at a racetrack testing vehicle emissions as if it's a public road.

The EPA's action will harm all involved, from owners and operators of tracks, to vendors who sell food and souvenirs, and of course families who spend Saturday evening at the local racetracks.

Furthermore, this regulation targets businesses who manufacture the aftermarket exhaust systems that replace the stock systems. According to the Specialty Equipment Market Association, this industry employs over one million people nationally. These systems are essential—essential part of racing and the makers of them are often small businesses that cater to specific markets. I have many of them in my district, people like Jason from Gastonia in my district, a constituent who first brought this EPA overreach to my attention. For people like Jason, this is not simply a weekend hobby but rather what pays the bills for him and his family. We cannot stand idly by watching the EPA regulate hardworking Americans like Jason right out of business.

In response to this misguided regulation, I have introduced H.R. 4715, the Recognizing and Protecting Motorsports, or the RPM Act. This bipartisan legislation reaffirms Congressional intent that vehicles used solely for competition are not subject to emissions standards under the Clean Air Act and that it would not be considered tampering to modify these vehicles for exclusive track use.

If the EPA gets its way on this issue, it will do irreparable harm to motorsports and the businesses that power them. It is imperative we act now to stop the EPA's heavy-handed approach and preserve this sport that serves as a hobby and living to millions of Americans.

Mr. Chairman, thank you again for having me here today and inviting me to speak on this important issue. I applaud the Committee's work in addressing this issue and look forward to continuing to work with the Committee and the Committee staff to preserve our nation's rich motorsports heritage for future generations.

And with that, I yield back.

[The prepared statement of Mr. McHenry follows:]

Thank you Chairman Loudermilk and members of the committee for having me here today. It's an honor to speak to you on this important issue affecting motorsports in America.

I represent an area of North Carolina that has a rich history of supporting and participating in motorsports. From amateur weekend racers to NASCAR drivers, motorsports plays a vital role in Western North Carolina both recreationally and economically. Many communities in my district and across the country have race tracks that provide an outlet for motorsports enthusiasts – both competitors and fans alike.

The Environmental Protection Agency recently issued a proposed rule that makes it illegal to convert a vehicle if its emission system is modified and taken out of compliance from its stock configuration. The EPA made this rule with little input from the affected motorsports stakeholders – catching many of them by surprise. Mr. Chairman, this is not the way to formulate a regulation.

While the Clean Air Act authorizes the government to regulate the emissions of vehicles, Congress never intended for the EPA to regulate vehicles that are modified for use on race tracks. In 1990, Congress affirmed this exemption when it authorized the EPA to regulate "nonroad vehicles" and explicitly excluded any "vehicle used solely for competition" from the nonroad definition.

This new regulation will prohibit responsible, law abiding people who wish to modify their car for racing on closed tracks from doing so. The federal government has no place at a track testing vehicle emissions as if it's a public road.

The EPA's action will harm all involved. From owners and operators of tracks to vendors who sell food and souvenirs and of course families who spend Saturday nights at their local short track.

Furthermore, this regulation targets businesses who manufacture the aftermarket exhaust systems that replace the stock systems. According to the Specialty Equipment Market Association (SEMA), this industry employs over one million people nationally. These systems are an essential part of racing and the makers of them are often small businesses that cater to specific markets.

People like Jason from Gastonia, my constituent who first brought this EPA overreach to my attention. For people like Jason, this is not simply a weekend hobby but rather what pays the bills for him and his family. We cannot stand idly by while the EPA regulates hard working Americans like Jason out of business.

In response to this misguided regulation, I have introduced HR 4715 – The Recognizing the Protection of Motorsports, or RPM Act. This bipartisan legislation reaffirms congressional intent that vehicles used solely for competition are not subject to emissions standards under the Clean Air Act and that it would not be considered tampering to modify these vehicles for exclusive track use.

If the EPA gets its way on this issue, it will do irreparable harm to motorsports and the businesses that power them. It is imperative we act now to stop the EPA's heavy-handed approach and preserve this sport that serves as a hobby and living to millions of Americans.

Thank you again, Mr. Chairman, for inviting me to speak on this issue. I applaud the Committee's work addressing this issue and look forward to continuing to work with the Committee to preserve our nation's rich motorsports heritage for future generations.

Congressman Patrick McHenry is serving his 6th term as the representative for North Carolina's 10th Congressional District which comprises seven counties in western North Carolina, from the suburbs of Charlotte to Asheville in the Blue Ridge Mountains. He currently serves as the Chief Deputy Whip for House Republicans, a leadership position placing him second in command of the House Republicans' vote-counting efforts. Additionally he serves as Vice Chairman of the House Financial Services Committee giving him a leading role on policy effecting banks, credit unions, and other financial products. From his role on the Financial Services Committee, Congressman McHenry played a leading role in crafting the crowdfunding portions of the JOBS Act of 2012- legislation to help small businesses and entrepreneurs access much needed capital.

Prior to being elected to Congress in 2004 at the age of 29, Congressman McHenry served in the North Carolina House of Representatives. He is a graduate of Ashbrook High School in Gastonia, N.C. and Belmont Abbey College, where he earned a Bachelor of Arts in History. Congressman McHenry lives in Lincoln County with his wife Giulia and daughter Cecelia.

Chairman LOUDERMILK. Thank you, Mr. McHenry, for your testimony. We appreciate you also introducing the RPM Act, a very appropriate name.

At this time we'll take a very brief recess while the clerk resets the witness table. And at this time while the table's being set up, I'd like to ask for unanimous consent to enter into the record a letter supporting H.R. 4715 from Sean Stewart, Executive Director of the United States Motorsports Association. This letter also contains statements of support from Robert Pattison, Executive Vice President of Lucas Oil, Torrey Galida, President of Richard Childress Racing Enterprises, and Steve Farmer, Vice President of Corporate Development at the University of Northwest Ohio. Without objection, so ordered.

[Recess]

[The information appears in Appendix I]

Chairman LOUDERMILK. We'll call the hearing back to order at this moment, and again, I appreciate everyone in attendance, both our witnesses and the members of the Committee, and I would advise members of the Committee, if we can, we'll try to keep our puns as much at a minimum as we can, but with that, gentlemen, let the introductions begin.

I'll introduce our witnesses of our second panel. First we have Mr. Christopher Kersting. He is the first witness of the second panel, and President and CEO of the Specialty Equipment Marketing Association. Mr. Kersting previously served as the Vice President of Legislative and Technical Affairs at SEMA. Mr. Kersting received his bachelor's degree in business from the University of Colorado and his law degree from Washington College of Law at American University.

Our next witness today is Mr. Ralph Sheheen, Managing Partner and President of National Speed Sport News. Mr. Sheheen has been broadcasting motorsports for over 20 years and is one of the lead broadcasters of the NASCAR Camping World Truck Series. Mr. Sheheen has previously worked with a variety of major television networks including CBS, Fox, NBC and ESPN.

Our final witness today is Mr. Brent Yacobucci, Section Research Manager of the Energy and Materials Section of the Congressional Research Service. Mr. Yacobucci previously served as the Acting Deputy Assistant Director of Resources, Science, and Industry for the Congressional Research Service. Mr. Yacobucci received his bachelor's degree in mechanical engineering from the Georgia Institute of Technology—he's a Ramblin' Wreck—and his master's degree in science, technology, and public policy from George Washington University.

I now recognize Mr. Kersting for five minutes to present his testimony. Could you push your microphone switch there?

**TESTIMONY OF MR. CHRISTOPHER KERSTING,
PRESIDENT AND CEO,
SPECIALTY EQUIPMENT MARKETING ASSOCIATION**

Mr. KERSTING. There we go. Chairman Loudermilk, Ranking Member Beyer, Ranking Member Johnson, Full Committee Chairman Smith—when he comes back—and members of the Subcommittee. I appreciate the opportunity to speak with you today

about the regulations recently proposed by the U.S. Environmental Protection Agency to prohibit the conversion of street vehicles into racecars.

My name is Chris Kersting. I am President and CEO of the Specialty Equipment Market Association, otherwise known as SEMA. SEMA's a national trade association. It represents more than 6,800 mostly small businesses that manufacture, market, and sell a wide range of specialty automotive aftermarket products including racing equipment for motorsports competition.

As noted, in July of 2015, the EPA issued a proposal regulation to make illegal the act of modifying and converting a street car, truck or motorcycle into a race vehicle. If finalized, this regulation would contradict 46 years of EPA policy and practice under the Clean Air Act as well as the intention of Congress when the relevant portions of the law were enacted in 1970. SEMA contends that the EPA's new interpretation of the law puts this long history and practice and the American motorsports tradition itself into jeopardy.

Given this uncertainty and the importance of the matter to so many, we urge Congress to now establish a clear exemption in the law allowing street vehicles to continue being modified and converted for motorsports competition.

By way of background, since the 1960s, SEMA has worked closely with the EPA and the California Air Resources Board, otherwise known as CARB, as regulations were developed for street vehicles and emissions-related aftermarket parts, and SEMA does not view the opportunity today as antagonistic. We appreciate the chance to shed some light on an important matter.

Under the longstanding EPA and CARB regulations, it is already illegal to knowingly manufacture, market, sell, or install a part or component that negatively affects the emissions performance of a street vehicle. CARB worked with SEMA in the early years of the law to develop an emissions certification program that allows a specialty parts manufacturer to test and certify that a particular part does not negatively affect emissions. The federal EPA accepts CARB certification as demonstrating emissions compliance and allows certified parts sales in the states where EPA has jurisdiction.

In the past several years, SEMA and CARB have ramped up collaborative efforts on industry compliance. Last October, SEMA completed construction on a new CARB-approved emissions testing facility where SEMA members get priority to demonstrate that their products comply with street-use emissions requirements under CARB's protocol. Further, for the past several years, SEMA has been working directly with EPA officials concerning equipment that would be illegal if used on road-going vehicles.

Our industry has a long history of emissions compliance and cooperation with regulators, and we're working, and you can see we're investing substantially in ways to help our members achieve compliance more quickly and cost-effectively.

The Clean Air Act does not extend authority to EPA to regulate competition vehicles. Congress first addressed the issue in 1965 when it set the definition for how far that authority extends. It's defined as motor vehicles. Motor vehicles are self-propelled vehicles

designed for transporting persons or property on a street or highway.

While the Clean Air Amendments of 1970—or with the Clean Air Act Amendments of 1970, the on-record deliberations of the Conference Committee made clear that Congress did not intend the term “motor vehicle” to extend to vehicles manufactured or modified for racing. The question was actually put and answered.

Next, in 1990, Congress provided the EPA with the authority to regulate non-road vehicles and engines. Since the term “non-road vehicle” could have been misunderstood as including racing vehicles, Congress actually included language to make clear that the law excludes vehicles used solely for competition.

And it isn’t only Congress that has consistently excluded vehicles modified for use in competition. EPA itself has a history of policies and practices that up until the recently proposed regulations have recognized the exclusion. For example, the EPA’s regulations pertaining to non-road vehicles specifically allows emissions-certified recreational motorcycles as well as snowmobiles and boats to be decertified and converted for competition use, the very issue we’re talking about with regard to street vehicles.

EPA also has specific policies for those wishing to import into the United States cars and trucks that have been altered for competition use. EPA’s own import documentation forms specifically ask the importer to supply the vehicle’s year, make, model, and VIN number. These are street vehicles we’re talking about here. The EPA has historically recognized that altered competition vehicles are not required to meet emissions requirements and has allowed the import of these noncompliant racecars.

It is against this background that EPA recently revealed its entirely novel interpretation that the Clean Air Act has always provided EPA the authority to prohibit the conversion of emissions-certified street vehicles for use in motorsports. That is why SEMA strongly supports H.R. 4715, the RPM Act of 2016.

This amendment to the Clean Air Act would eliminate any uncertainty now and in the future and make clear that the law allows emissions-certified street vehicles to be modified and converted for competition use.

In a few moments, this Subcommittee is going to hear from Mr. Ralph Sheheen. He’s going to describe the impact the EPA’s proposed regs would have on American motorsports and the communities supported by racing. Many states see motorsports-related industries as a driving force for their economies. It would be a shocking reversal to suddenly place most of the U.S. motorsports tradition outside of the law, and at risk of elimination.

As for impacts on the automotive side, EPA’s proposed regulations would cause a devastating outcome since most of the non-professional racing activity in the United States relies on production vehicles that have been modified for use at the track, and because of the federal emissions standards went into effect beginning in 1968, the EPA’s proposal would render illegal converted racing vehicles and future racing-parts sales for model years 1968 and forward.

So what does that really mean? The proposed regs would eliminate the manufacturing, distribution, retail sales, and installation

businesses that supply the products and services required in motor-sports. Retail sales of just the racing parts alone make up a \$1.4 billion annual market, and that's to speak nothing of related ancillary sales for other equipment. Tens of thousands of jobs would be lost. The carmakers would also experience a significant negative impact as their racing-related divisions would evaporate including racing-related product engineering and development, and vast sales and marketing programs.

Clearly, in the wake of EPA's newly revealed interpretation of the Clean Air Act, the public and regulated industry deserve certainty concerning such an important provision of the law. SEMA supports passage of H.R. 4715 to confirm the directives and the intent of Congress.

I want to add that I agree with Congressman Beyer's point that we don't want to have laws on the books which we have no intention of enforcing, and yet that is what EPA has indicated in recent statements. It really makes very little sense. And I don't expect that folks who have invested both in racecars and in the businesses that support racing want to live under the cloud of a line being drawn around this activity that deems it illegal.

Thank you all again for this opportunity to speak on behalf of SEMA and this matter of critical importance. I would be glad, of course, to answer any questions that you might have.

[The prepared statement of Mr. Kersting follows:]



Testimony of

Christopher J. Kersting, President & CEO
Specialty Equipment Market Association

before the

Subcommittee on Oversight
House Committee on Science, Space and Technology

on

March 15, 2016

Introduction

Chairman Loudermilk, Ranking Member Beyer, and members of the Subcommittee, I appreciate the opportunity to speak with you today about a proposed regulation by the U.S. Environmental Protection Agency (EPA) to prohibit the conversion of motor vehicles into vehicles used solely for competition or, as they are more commonly called, racecars.

My name is Chris Kersting and I am the President and CEO of the Specialty Equipment Market Association (SEMA). SEMA is a national trade association that represents more than 6,500 mostly small businesses that manufacture, market and sell specialty automotive aftermarket products, including appearance, performance, comfort, convenience and technology products for vehicles. Our members sell a wide variety of products, everything from truck caps for pickup trucks to wheels and tires to products that enhance the performance of motor vehicles used in motorsports competition. SEMA also hosts the SEMA Show, the largest annual gathering of small businesses in the U.S.

In July of 2015, the EPA issued its proposed regulations to make illegal the act of converting a motor vehicle – defined in the Clean Air Act as a car, truck or motorcycle designed for use on the public streets and highways – into a racecar. This prohibition would include even those vehicles used solely at the track and never again used on public roads. As will be described, this regulation would contradict 46 years of EPA policy and practice under the Clean Air Act as well as the intent of Congress when the act was made law in 1970. SEMA contends that the EPA is seeking to exceed the bounds of statutory authority to regulate road vehicles, stretching its authority to include vehicles converted and used exclusively as racecars.

SEMA applauds the recent introduction of bipartisan legislation by Representatives McHenry, Cuellar, Hudson, Posey and Zeldin to eliminate any question as to the intention of Congress under the Clean Air Act. H.R. 4715, the “Recognizing the Protection of Motorsports Act of 2016” (the RPM Act) makes clear that converting street vehicles to racecars used exclusively in competition does not violate the law.

Collaboration with Federal/State Regulatory Agencies

SEMA was founded in 1963 by companies that produced performance equipment for early speed competition, but quickly expanded in the following years to represent the entire specialty equipment market. A key priority for SEMA has been to collaborate with lawmakers and regulators both at the state and federal levels to ensure that laws and regulations for these products are effective, necessary and least burdensome. SEMA seeks reasonable and responsible application of the law so that companies can thrive and consumers can benefit from the resulting product benefits and technological advances.

It is useful to mention some of the many safety and environmental advances that originated in the specialty aftermarket. They include cruise control, retractable seat belts, recessed steering wheels, reinforced roofs, roll bars, door locks, air bags, intermittent windshield wipers, door-mounted mirrors, back-up cameras, hands-free technology, catalytic converters and gasoline

direct injection technology. Many of these products were first developed for racecars and eventually became standard equipment on motor vehicles.

Since its founding in the 1960s, SEMA has worked closely with officials from the EPA and California Air Resources Board (CARB) as regulations were developed and implemented for street vehicles and emissions-related aftermarket parts. Under both EPA and CARB regulations, it is illegal to knowingly manufacture, sell, or install a part or component that would negatively affect emissions performance of a regulated vehicle.

In 1974, the EPA issued Memorandum 1A to provide guidance on how the agency would enforce the anti-tampering provision of the Clean Air Act “without imposing unnecessary restraints on commerce in the automotive aftermarket.”¹ In short, the EPA settled on a policy whereby aftermarket parts can be used so long as there is a “reasonable basis for knowing that such use will not adversely affect emissions performance.”

Working with the specialty parts industry in the early years of vehicle regulations, CARB developed an emissions certification program, the Executive Order or “E.O.” program that allows specialty parts makers to certify that a particular part does not negatively impact emissions. The EPA accepts CARB E.O. certification as sufficient for demonstrating a “reasonable basis” that emissions are not negatively affected.

SEMA’s services to its members include instructing the industry on compliance with relevant laws and regulations. In furtherance of that mission, SEMA recently built and operates a state-of-the-art emissions testing facility where companies can demonstrate that their on-road products comply with emission requirements under CARB’s E.O. testing protocol.

SEMA also facilitates communications between regulators and industry members. For example, the annual SEMA Show held in Las Vegas is a gathering point for industry leaders. Besides displaying their newest products, company representatives are available to attend seminars and meetings with lawmakers and regulators. SEMA has regularly arranged for EPA and CARB officials to attend the SEMA Show, walk the aisles, and participate in panel discussions and seminars on emissions regulations.

Since 2008, SEMA has been working directly with EPA officials to target equipment that would be illegal if used on road-going vehicles. The goal has been to identify better means by which the agency could restrict racing products to their intended purpose and keep them off public roadways. Since its founding, SEMA has sought to work cooperatively with regulators and is disappointed that the current proposal was issued by the agency amid these discussions without notice to the regulated community.

¹ OFFICE OF ENFORCEMENT & GEN. COUNSEL, EPA, MOBILE SOURCE ENFORCEMENT MEMORANDUM NO. 1A, INTERIM TAMPERING ENFORCEMENT POLICY (1974).

New Application of the Clean Air Act to Racecars

The EPA is not authorized to regulate racecars, whether they be purpose-built or production cars modified for racing. Congress first addressed this issue in the Motor Vehicle Air Pollution Control Act of 1965, when it defined “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” When the Clean Air Act Amendments were enacted in 1970, Congress clarified in conference committee deliberations that the term “motor vehicle” does not extend to vehicles manufactured or modified for racing.² In 1990, Congress provided the EPA with the authority to regulate nonroad vehicles/engines. Since the term “nonroad vehicle” could easily have been interpreted to include racecars, Congress included language to unequivocally exclude vehicles used solely for competition from the definition of “nonroad vehicle.”³

Despite the clarity of congressional intent, last July the EPA issued a proposed regulation that would make it illegal to convert a motor vehicle into a high performance racecar used exclusively at the track. To do so would be a violation of the tampering provisions of the law, subject to civil fines and related penalties. The EPA proposed regulation reads in part as follows:

EPA Proposal: 40 CFR § 86.1854-12(b) covering “Prohibited Acts” would be amended to add the following provision:

Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely for competition or if they become nonroad vehicles or engines; anyone modifying a certified motor vehicle or motor vehicle engine for any reason is subject to the tampering and defeat device prohibitions of paragraph (a)(3) of this section and 42 U.S.C. 7522(a)(3).

The EPA’s proposed regulation would apply to any vehicle, including sports cars, sedans and hatch-backs, which started life as a street car or motorcycle originally certified to federal emissions standards. The rule would prohibit modifications affecting any emissions-related component, which is broadly construed to include changes to engines, engine control modules, intakes, exhaust systems and more, even if the vehicle is converted into a dedicated track car and never again used on the streets. Because the federal emission standards went into effect

² See House Consideration of the Report of the Conference Committee, Dec. 18, 1970 (reprinted in *A legislative history of the Clean air amendments of 1970, together with a section-by-section index*, U.S. LIBRARY OF CONGRESS, ENVIRONMENTAL POLICY DIVISION, Washington: U.S. Govt. Print. Off. Serial No. 93-18, 1974, p. 117) (Representative Nichols: “I would ask the distinguished chairman if I am correct in stating that the terms ‘vehicle’ and ‘vehicle engine’ as used in the act do not include vehicles or vehicle engines manufactured for, modified for or utilized in organized motorized racing events which, of course, are held very infrequently but which utilize all types of vehicles and vehicle engines?”; Representative Staggers: “In response to the gentleman from Alabama, I would say to the gentleman they would not come under the provisions of this act, because the act deals only with automobiles used on our roads in everyday use. The act would not cover the types of racing vehicles to which the gentleman referred, and present law does not cover them either.”).

³ See 42 U.S.C. § 7550(10) (2016) (“The term ‘nonroad vehicle’ means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.”).

beginning in 1968, the EPA’s proposal would cover all vehicles dating back to that year. In fact, older vehicles are frequently raced with an original body and chassis, but with completely new performance engines and parts under the hood. These upgrades improve the performance, and in most cases, the emissions of these older racecars, but would be illegal under the EPA’s proposal.

Statements from the EPA suggest that the agency has proposed this change because it needs further enforcement authority to go after emissions defeat devices on street vehicles. However, the EPA already has authority to enforce against anyone who offers, sells or installs products that knowingly take a regulated motor vehicle out-of-compliance. The agency is now claiming that the Clean Air Act authorizes it to regulate equipment taken off the public roads and used solely as racecars. This policy conflicts with the legislative history and the statutory definition of “motor vehicle.”

The Clean Air Act was enacted 46 years ago and SEMA is unaware of a single instance in which the EPA previously took the position that the law applies to motor vehicles converted for race-use-only. Industry, the public and lawmakers have had a clear understanding that these vehicles are excluded from the Clean Air Act. The EPA’s enforcement division is now attempting to rewrite the law.

The proposed policy even conflicts with the EPA’s “Green Racing Program” which seeks to collaborate with industry and race sanctioning organizations to promote innovative product development through racing. Phrased differently, the EPA’s Green Racing Program serves as a testing platform for new safety and performance technologies that will eventually benefit the public when they are incorporated into mass-produced vehicles. Yet, the EPA’s enforcement division is proposing to stifle the program and the new products that could emerge.

Given that SEMA views the proposal as a dramatic shift in EPA policy that has never been previously applied, it is important to note how the EPA made the public aware of this interpretation. The proposed regulation was tucked deep within an unrelated greenhouse gas rulemaking for trucks and buses issued in July, 2015. In the table of contents for the 629-page rule, there was no reference to “Competition Use Engines/Vehicles” or any similar heading. The topic was included with other seemingly minor issues under the heading “XIV. Other Proposed Regulatory Provisions.” Since the subject rulemaking applies to medium- and heavy-duty engines for model year 2018 and beyond, these markers were wholly insufficient in alerting the public to a regulation applicable to light-duty vehicles and that would eliminate a large portion of the U.S. motorsports activity and heritage dating back to 1968.

Not surprisingly, there was not a single public comment submitted on the racecar provision until SEMA discovered it and then submitted comments on Dec. 28, 2015, after the formal comment period had ended. However, when SEMA issued a press release and the public became aware of the EPA proposal on Feb. 8th, over 100,000 individuals signed a White House petition in less than 24 hours, asking the administration to direct the EPA to withdraw its proposal.

The EPA failed to comply with Administrative Procedure Act and Clean Air Act requirements that are intended to provide adequate opportunity for the public to comment on proposed rules. Constitutional due process also demands agencies provide adequate notice to regulated

individuals. Further, the EPA failed to conduct an economic analysis, regulatory-flexibility analysis or small business analysis on the racecar provisions, as required under law.

On March 2, 2016, the EPA issued a “Notice of Data Availability” that recognizes SEMA’s concerns over the proposed racecar regulation. The EPA did not defend its position. Rather, it simply asked the public to comment on SEMA’s December 2015 comments. While the rulemaking has been reopened for public comment, there is no supplemental information to fulfill EPA obligations to conduct an economic analysis, regulatory-flexibility analysis or small business analysis. Instead of ending the debate and withdrawing its flawed interpretation, the EPA is allowing it to move forward for an indefinite period of time. Hence, it remains the EPA’s official policy that racecars dating back to 1968 are subject to enforcement.

Impact of the EPA Proposal on the Industry

The EPA’s proposed regulation would have a devastating impact on motorsports since many types of racing rely on production vehicles that have been modified for use strictly at the track. It would also devastate the industry that supplies the products used in motorsports. The specialty equipment automotive aftermarket employs about one million Americans across all 50 states. Current retail sales of racing products make up a \$1.4 billion annual market. Beyond specialty racing equipment, the regulation would have a significant negative impact on racing-related divisions among the vehicle manufacturers, involving advanced product engineering and development, development of safety systems and sales and marketing. The number of jobs lost in the automotive industry as a result of the regulation will be considerable.

Motorsports as an industry generates billions of dollars of economic activity across the nation. Many states see motorsports-related industry as a driving force of their economies, such as Indiana, which has an estimated 23,000 Indiana residents employed by motorsports companies with an average salaries of \$63,000.⁴ Indianapolis Motor Speedway alone contributes over \$510 million of economic activity annually in Indiana.⁵ In Ohio, Summit Motorsports Park sponsored by aftermarket parts supplier Summit Racing has a \$99.5 million economic impact on the surrounding community.⁶ That translates into jobs lost as well as denying Americans the ability to enjoy the sport of racing, either as drivers, teams or spectators. Legitimate racing products may no longer be developed and sold to the racers, and businesses may no longer be willing to modify vehicles.

Motor vehicles are also regulated by the National Highway Traffic Safety Administration (NHTSA). Similar to the Clean Air Act’s tampering prohibition, under the Motor Vehicle Safety Act it is illegal for a manufacturer, distributor, dealer, or motor vehicle repair business to knowingly make inoperative any part of a device or element of design installed on or in a motor

⁴ Rich Van Wyk, *Study Shows Motorsports Impact on Indiana Economy*, WTHR (Dec. 6, 2012), available at <http://www.wthr.com/story/20281896/study-shows-motorsports-impact-on-indiana-economy>.

⁵ Drew Klacik, *Estimating the Annual Economic Contributions of Indianapolis Motor Speedway*, INDIANA UNIVERSITY PUBLIC POLICY INSTITUTE at 3 (2013), available at http://www.imsproject100.com/wp-content/uploads/2013/07/Report_Update.pdf.

⁶ *Economic impact study released: Race track generates \$99.5 million a year for other local businesses*, Summit News (Feb. 28, 2013), available at <http://www.summitmotorsportspark.com/news/81-news/217-economic-impact-study-released>.

vehicle or motor vehicle equipment in compliance with a motor vehicle safety standard. The Motor Vehicle Safety Act's "make inoperative" prohibition does not apply to a certified motor vehicle that has been modified into a vehicle used solely for competition, placing it in conflict with the EPA's proposed interpretation of the Clean Air Act's tampering prohibition. Beyond statutory differences, the issue has significant economic and safety implications. Competition use vehicles are modified in shops across the nation and the vehicles are outfitted with safety equipment such as five-point seat belts, roll bars, cages and safety netting, suspension, wheels and tires. These ancillary sales and services would cease as a result of the EPA's proposed policy because performance modifications to make the vehicles suitable for racing would be prohibited.

The EPA's proposal would also subject the industry to two contradictory stances on competition-use-only products, since they would become illegal at the federal level but permitted by the State of California.⁷ In settlement agreements with non-complying companies, CARB routinely requires companies to appropriately label racing-use-only products with disclaimers to inform consumers that the part may only be used for competition.⁸

Conclusion

The public and regulated industry need certainty regarding how the Clean Air Act is applied. Until July 2015, there never appeared to be any confusion regarding congressional directives and intent with respect to the racecar conversion issue. SEMA supports passage of H.R. 4715, the "Recognizing the Protection of Motorsports Act of 2016", that would confirm those directives and intent.

Thank you again for this opportunity to speak on behalf of SEMA.

⁷ See Cal. Health & Safety Code § 43001 (2016) ("The provisions of this part [Part 5 – Vehicular Air Pollution Control] shall not apply to: (a) Racing vehicles."); see also Cal. Health & Safety Code § 39048 (2016) ("Racing vehicle" means a competition vehicle not used on public highways.).

⁸ See Settlement Agreement and Release, ARB and LeMans Corporation at 6 (Jan. 16, 2016), available at http://www.arb.ca.gov/enf/casesett/sa/lemans_corp_sa.pdf ("To the extent LEMANS advertises non-exempt parts in California, it shall use one of the following disclaimers:.. C. 'LEGAL IN CALIFORNIA ONLY FOR RACING VEHICLES WHICH MAY NEVER BE USED, OR REGISTERED OR LICENSED FOR USE, UPON A HIGHWAY,' or D. 'FOR CLOSED COURSE COMPETITION USE ONLY. NOT INTENDED FOR STREET USE,'...").



Short Biography of

Christopher J. Kersting, President & CEO
Specialty Equipment Market Association

before the

Subcommittee on Oversight
House Committee on Science, Space and Technology

on

March 15, 2016

Chris Kersting has been president and CEO of the Specialty Equipment Market Association (SEMA) since July 2002. He is the fifth staff executive to lead the trade group since its founding in 1963.

As president and CEO, Kersting has led SEMA's growing influence in the automotive industry through a series of innovative programs and services that help the association's more than 6,000 member companies capture new business opportunities. With a focus on programs targeted to small businesses, he has championed initiatives that include industry collaboration on vehicle technology, industry data standardization, and strong legislative and regulatory advocacy.

Kersting became a SEMA staff member in 1996 when he joined the Washington, D.C., office as vice president of legislative and technical affairs. As the association's lead representative in the nation's capital, he successfully urged lawmakers to pass bills that protected the interests of SEMA member companies and challenged government regulation in order to maintain innovation and growth in the aftermarket industry.

Early in his career, Kersting worked for SEMA as outside counsel and government affairs representative. He also handled legal matters for SEMA member companies, as well as industry institutions such as the National Hot Rod Association (NHRA), Performance Warehouse Association (PWA) and Auto International Association (AIA).

A Certified Association Executive (CAE), Kersting received his law degree from Washington College of Law, American University in 1989 and graduated from the University of Colorado with a Bachelor of Science degree in business in 1985.

Born in Cincinnati, Ohio, Kersting currently resides in Pasadena, California, with his wife and family.

Chairman LOUDERMILK. Thank you, Mr. Kersting.
And I now recognize Mr. Sheheen for five minutes to present his testimony. You have the green flag, sir.

**TESTIMONY OF MR. RALPH SHEHEEN,
MANAGING PARTNER AND PRESIDENT,
NATIONAL SPEED SPORT NEWS**

Mr. SHEHEEN. Thank you, Chairman Loudermilk, Ranking Member Beyer, and Members of the Subcommittee. Thank you for inviting me to speak about the U.S. Environmental Protection Agency's recent proposal to prohibit the modification of street vehicles into race-use-only vehicles.

Over the past 31 years, I have built a career around the exciting sport of auto racing. I am currently one of the owners and President of National Speed Sport News, a publication that dates back to 1934. I have also spent much of my career as a motor sports broadcaster for a variety of networks including Fox, CBS, NBC, and ESPN, and countless radio networks. On any given weekend, you can find me calling the action live on TV from racetracks across the country. I'm in a unique position to speak to the impact this regulatory proposal would have on the motorsports community.

For me, it began at the age of five. My parents took me to my first race at the old fairgrounds mile in Sacramento, California. Legendary racers such as Mario Andretti, A.J. Foyt, and the Unser Brothers were competing that day. I can still remember vividly to this day my father walking me across the track at the end of the race and my shoes sticking to the dirt they had just raced on. Seeing the cars and the drivers up close, hearing the roar of the engines, and experiencing the unique smells are indelible memories. The blazing speeds and the incredible feats of bravery as these men risked it all for the glory that came with the checkered flag hooked me for life. These experiences aren't unique to me. They have been shared by millions of race fans young and old across our country for generations.

I chose to make motorsports my career. For 28 years I have been a nationally recognized sportscaster, broadcasting some of the biggest motorsports events in the world including the Indianapolis 500, the Daytona 500, and the Monaco Grand Prix. I've also dedicated a large part of my career to saving one of our sports' true treasures: National Speed Sports News, which is America's oldest and most trusted name in motorsports journalism. Due to the passion I have for this sport and its history, Speed Sport is now a full-fledged and thriving media company. We cover motorsports from the very top levels all the way down to your local dirt track.

Most racers begin their careers competing in a division that utilizes a modified production vehicle. That's because it is the cheapest and most cost-effective form of racing. The EPA regulation to prohibit any production vehicle from ever being converted or modified for racing use would be devastating to many types of racing, particularly racing at the amateur levels where the racers are not in a position to purchase the purpose-built racecars used in many professional series. There are over 1,300 racetracks in this country, and the vast majority are not dedicated to running high-cost

racecars like the well-known top divisions of NASCAR, IndyCar, and the NHRA.

Many of the famous drivers who compete in these very popular series started their very careers in converted street cars that they trailered to their local track every weekend. For many years, the great American race, the Daytona 500, as well as the greatest spectacle in racing, the Indy 500, utilized modified vehicles as well, production vehicles that were modified. These world-renowned events that are such an integral part of America's sporting landscape would've been outlawed by this EPA regulation.

The racers who would be hit hardest by this proposal are the individuals who are just starting out in the sport, and the communities that support them. Companies supplying the parts used in these amateur series and the shops that perform the modifications would also suffer.

These vehicles are frequently converted into track-use-only cars and are rebuilt many times throughout their years spent in competition. To remove the ability to create, rebuild, improve, or service these vehicles is to take away the ability of most enthusiasts to engage in much of the racing that presently takes place in the United States.

On Friday and Saturday nights at tracks across the country, you will encounter amateur racers and the communities that come out to support them. The impact of this regulation goes beyond the individual racers in the pits and their ability to build and service their cars as entire communities would suffer. Families, men, women and children come out to the local racetrack on the weekend to cheer on and support their friends, neighbors and family members. Fathers, sons, mothers and daughters spent countless hours working together to get the family racecar ready for the next weekend's event. Racing is a lifestyle, and in many towns across the country, it is the highlight of the weekend.

Beyond this practical impact on daily lives, racing provides a significant boost to the economies of communities with motorsports businesses and racetracks.

In Chairman Loudermilk's home State of Georgia, the owners of a successful high-performance parts business are enhancing the economy of southeast Georgia by creating the Georgia International Raceway Park, which is expected to bring in around \$75 million annually and more than 200 full-time and part-time jobs within a five-year span.

In Florida, the home state of Representatives Posey and Grayson, the Daytona International Speedway and the Homestead Miami Speedway generate an annual economic impact of over \$2.1 billion and over 35,000 permanent jobs.

And in my home State of North Carolina, approximately 27,252 residents in 2005 were employed in motorsports-related jobs including employees working for suppliers of the equipment used in racing. This is a \$6.2 billion-a-year-old industry in North Carolina. That number has almost certainly gone up in the ten-plus years since a full-scale economic impact study was completed by economists at UNC Charlotte.

Until this recent EPA proposal, no government entity has questioned the legality of using modified production vehicles exclusively

for racing, and an enormous industry has been created as a result. It seems absurd that a federal agency could outlaw thousands of racecars and the businesses that supply products for these cars without legislative authority or justification.

On behalf of racing enthusiasts across the country and the industries that serve them, I ask for your support for H.R. 4715, the Recognizing the Protection of Motorsports Act of 2016, to make clear that converting street vehicles to racecars used exclusively in competition does not violate the Clean Air Act.

Thank you again for this opportunity to testify. I'm happy to answer any questions you may have.

[The prepared statement of Mr. Sheheen follows:]



Racing to Regulate: EPA's Latest Overreach on Amateur Drivers

Statement of Mr. Ralph Sheheen
Managing Partner & President, National Speed Sport News

**Before a Hearing of the Subcommittee on Oversight
of the House Science Committee**

Tuesday, March 15, 2016 - 10:00am
2318 Rayburn House Office Building
Subcommittee on Oversight (114th Congress)

Chairman Loudermilk, Ranking Member Beyer, and members of the Subcommittee, thank you for inviting me here today to speak to the U.S. Environmental Protection Agency's (EPA) recent proposal to prohibit the modification of street vehicles into race-use-only vehicles. Over the past 28 years, I have built a career around the exciting sport of auto racing. I am currently one of the owners and President of National Speed Sport News, a publication that dates back to 1934. I have also spent much of my career as a broadcaster of motorsports on national television for a wide variety of networks, including FOX, CBS, NBC and ESPN, and countless radio networks. On any given weekend, you can find me calling the action live on TV from racetracks across the country, so I am in a unique position to speak to the impact this regulatory proposal would have on the motorsports community.

For me it began at the age of five. My parents took me to my first race at the old fairgrounds mile in Sacramento, California. Legendary racers such as Mario Andretti, AJ Foyt and the famed Unser brothers were competing. I can still remember vividly to this day, my father walking me across the track at the end of the race and my shoes sticking to the dirt that they had raced on. Seeing the cars and the drivers up close, hearing the roar of the engines, and experiencing the unique smells are indelible memories. The blazing speeds and the incredible feats of bravery as these men risked it all for the glory that came with the checkered flag hooked me for life. These experiences aren't unique to me. They have been shared by millions of race fans, young and old, across our country for generations.

For years after that day, my family, like many American families, regularly attended motorsports events. It didn't matter if it was stock cars, sports cars, sprint cars or drag races. We saw it all. We enjoyed the competition and the time together at the races. My own family, my wife

Kimberly and my children Olivia and Lucas, have continued this tradition and have many wonderful memories of our time at the track with our racing family.

Nobody in my family ever became a competitor. However, I chose to make motorsports my career. For 28 years I have been a nationally recognized sportscaster broadcasting some of the biggest motorsports events in the world including the Indy 500, the Daytona 500 and the Monaco Grand Prix.

I have also dedicated a large part of my career to saving one of our sports true treasures, National Speed Sport News, which is America's oldest and most trusted brand name in motorsports journalism. Due to the passion I have for this sport and its history, Speed Sport News is now a full-fledged and thriving media company. With our wide variety of media layers that include a monthly magazine, website, social media and television shows, we cover motorsports from the very top levels all the way down to your local dirt track.

I have been blessed with an amazing career that began on that sunny autumn afternoon, when a little five year old boy passionately fell in love with a sport. At some point, every race car driver and motorsports fan had the same experience.

This proposed regulation from the EPA, however, would have kept my dream from ever becoming a reality. You see, those famous racers, Mario Andretti, AJ Foyt, Richard Petty, Dale Earnhardt and so many others like them, all began their careers in vehicles that would have been outlawed according to this regulation.

Most racers begin their careers competing in a division that utilizes a modified production vehicle. That's because it is the cheapest and most cost effective form of racing. The EPA regulation to prohibit any production vehicle from ever being converted or modified for racing use would be devastating to many types of racing, particularly racing at the amateur levels where the racers are not in a position to purchase the purpose-built race cars used in many professional series. There are over thirteen-hundred race tracks in this country, and the vast majority are not dedicated to running high-cost race cars like the well-known top divisions of NASCAR, IndyCar or the NHRA that you see on television. The famous drivers who compete in these very popular series may now drive for multi-million dollar teams in cars that cost hundreds of thousands of dollars to build. However, most started their careers in converted street cars that they trailered to their local track every weekend.

For many years, the Great American Race, the Daytona 500, as well as the Greatest Spectacle in Racing, the Indy 500, utilized modified production vehicles as well. These incredible world-renowned events that are such an integral part of America's sporting landscape would have been outlawed by this proposed regulation from the EPA.

The racers who would be hit hardest by this proposal are the individuals who are just starting out in the sport and the communities that support them. Companies supplying the parts used in these amateur series, and the shops that perform the modifications, would also be out of business. These vehicles are frequently converted into track-use-only cars and rebuilt many times throughout their years spent in competition. To remove the ability to create, rebuild, improve or

service these vehicles is to take away the ability of most enthusiasts to engage in much of the racing that presently takes place in the U.S.

On Friday and Saturday nights across the country, you will encounter amateur racers and the communities that come out to support them. The impact of this regulation goes beyond the individual racers in the pits and their ability to build and service their cars, entire communities would suffer. Families, men, women and children, come out to the local racetrack on the weekend to cheer on and support their friends, neighbors and family members. Fathers, sons, mothers and daughters spend countless hours working together to get the family race car ready for the next weekend's event. Racing is a lifestyle, and in many towns across the country it is the highlight of the weekend.

Beyond this practical impact on daily lives, racing provides a significant boost to the economies of communities with motorsports businesses and racetracks. In Chairman Loudermilk's home state of Georgia, the owners of a successful high-performance parts business are enhancing the economy of southeast Georgia by creating a motorsports complex, the Georgia International Raceway Park, which is expected to bring in around \$75 million annually and more than 200 full-time and part-time jobs within a five-year span.¹ In Florida, the home state of Representative Posey and Representative Grayson, the Daytona International Speedway and the Homestead-Miami Speedway "generate an annual economic impact of over \$2.1 billion and over 35,000 permanent jobs."² In my home state of North Carolina, approximately 27,252 residents in 2005 were employed in motorsports-related jobs, including employees working for suppliers of the equipment used in racing.³ That number has almost certainly gone up in the ten-plus years since a full-scale economic impact study was completed by economists at the UNC-Charlotte.

Until this recent EPA proposal, no government entity has questioned the legality of using modified production vehicles exclusively for racing and an enormous industry has been created as a result. The EPA's proposed regulation has completely ignored the racers and the industry that supports this sport. Overnight, race car owners would no longer be able to continue to maintain their vehicles for racing use, and most of these vehicles cannot be converted back to their original configurations. It seems absurd that a federal agency could outlaw thousands of race cars and the businesses that supply products for these cars without legislative authority or justification.

On behalf of racing enthusiasts across the country and the industries that serve them, I ask for your support for H.R. 4715, the "Recognizing the Protection of Motorsports Act of 2016," to make clear that converting street vehicles to race cars used exclusively in competition does not violate the Clean Air Act.

¹ Tracy Renck, PSM Icon Bryce eyes new Motorsports Complex in Americus, Competition Plus (Feb. 10, 2011), available at <http://www.southgatetech.edu/index.cfm?PageID=207&NewsID=199>.

² National Motorsports Coalition, Motorsports Economic Impact (October 2009), available at <http://www.internationalspeedwaycorporation.com/~media/23097C9EAF3F4423A213B8063362B400.ashx>.

³ John E. Connaughton & Ronald A. Madsen, The Economic Impacts and Occupational Analysis of the North Carolina Motorsports Industry for 2005 at 11-12 (2006), available at <http://northcarolinamotorsportsassociation.org/wp-content/uploads/2012/07/Economic-Impact-Study-Updated-2005.pdf>.



Short Biography of Mr. Ralph Sheheen
Managing Partner & President, National Speed Sport News

Ralph Sheheen, a native of Sacramento, California, has been broadcasting motorsports on national television for over 25 years. As a nationally recognized broadcaster he has covered everything from Swamp Buggies to Formula One and from Supercross to Moto GP. During his lengthy career, Ralph has held microphones for a wide variety of major television networks including FOX, CBS, NBC, FS1, FS2, TNT, ESPN, ESPN 2, NBCSN, CBSSN, MAVTV, TBS, FOX Sports South, SPEED, Versus, TNN, Prime Network, Sports Channel America and NHK.

Sheheen's on air experience has not been limited to just television, having also worked on the biggest racing radio networks in the country including PRN, MRN and the Indy Radio Network. He has also spent many hours broadcasting races over the PA at many of the world's most famous tracks including the Indianapolis Motor Speedway, Daytona International Speedway, Mazda Raceway Laguna Seca and Sonoma Raceway, to name a few.

Some of the broadcasting highlights for Ralph include being the Play-by-Play host for the first ever live broadcasts of such major events as the NHRA's US Nationals, the World of Outlaws Knoxville Nationals and the AMA's Supercross Series. Sheheen was also a member of the CBS Sports broadcast crew for one of the biggest days in the history of NASCAR, Dale Earnhardt Sr.'s victory in the famed Daytona 500.

Sheheen is also one of the proud owners and President of the original and most trusted brand name in American motorsports journalism, SPEED SPORT. Founded in 1934, SPEED SPORT is a full-fledged media company that produces SPEED SPORT Magazine, speedsport.com, "The Daily" newsletter, a multitude of television shows for national television networks and extensive motorsports coverage on social media.

Ralph has also expanded his racing resume to include a wealth of experience working on the public relations and marketing side of motorsports. He has worked in this capacity representing racetracks, drivers and series.

Motorsports is not just a job for Ralph, but a passion, one that can only be fueled with time behind the wheel and in the saddle. He has logged many laps in a wide variety of racing machinery, including NASCAR stock cars, Indy cars, sprint cars, sport bikes and numerous types of sports cars. He has chased checkered flags while competing in the VW Jetta TDi Cup, Thunder Roadsters and Karts. Sheheen even has a second place finish in the legendary Baja 1000 to his credit as a co-driver in Class 7 4x4. Ralph is also an avid motorcyclist and can often be found putting in as many miles as his schedule will allow on his customized Harley-Davidson Fat Boy.

Chairman LOUDERMILK. Thank you, Mr. Sheheen.

I now recognize Mr. Yacobucci for five minutes to present his testimony.

**TESTIMONY OF MR. BRENT YACOBUCCI,
SECTION RESEARCH MANAGER,
ENERGY AND MINERALS SECTION,
CONGRESSIONAL RESEARCH SERVICE**

Mr. YACOBUCCI. Good morning, Chairman Loudermilk, Ranking Member Beyer, and Members of the Subcommittee. I am Brent Yacobucci, the Energy and Minerals Section Research Manager for the Congressional Research Service. I was asked to provide background and to discuss CRS's research on tampering provisions and exemptions within the Clean Air Act and to discuss policy options to exempt racing vehicles.

Congressional guidelines require that I confine my testimony to technical aspects of matters under consideration and that I limit myself to questions within my field of expert. I can discuss policy options and ramifications but CRS does not take a position on pending or proposed legislation.

In July 2015, EPA proposed new emissions standards for medium- and heavy-duty vehicles and engines. Within the proposal are provisions that EPA maintains clarify longstanding policy but which part suppliers argue is new policy restricting owners from converting road vehicles for racing and suppliers from selling retrofit kits and other parts to those owners.

The original public-comment period ended in September. In response to comments from SEMA and for unrelated reasons, EPA reopened the docket for comments from March 2nd through April 1st.

The key policy question is whether a vehicle operated solely for racing is a motor vehicle as defined by the Clean Air Act and thus subject to tampering and defeat device provisions of the Act. To sell a new motor vehicle, the automaker must supply a certificate of compliance with federal standards. Under the Act, it is unlawful to remove, bypass, defeat or render inoperative any part of a motor vehicle's emissions system.

In 1990, Congress granted EPA new authority to regulate non-road vehicles and explicitly excluded those used solely for competition. However, there's no similar provision in the Act explicitly exempting a racing vehicle from the definition of motor vehicle after it has been certified as such. This is arguably a difference in interpretation between EPA and SEMA. EPA maintains that conversion of motor vehicles to racing vehicles is part of a larger prohibition on reclassifying motor vehicles for any purpose. SEMA, on the other hand, maintains that EPA and the Act's silence on the topic before 2015 mean that such conversions are allowed.

Under the 1990 Amendments, EPA established emissions standards for non-road vehicles and provided specific guidance for converting new non-road vehicles including motorcycles or dirt bikes from recreational use to competition. The owner must destroy the original emissions label attached to the bike and the owner may not then use the bike for recreation. This process is, to our under-

standing, based on owners' self-compliance, and the EPA does not maintain a list of such conversions.

EPA and other agencies also temporarily exempt importing racing cars through a detailed reporting process. Exemptions are granted by case, and importers must supply EPA among other things the vehicle identification, or VIN number, a list of race-specific characteristics, and a list of characteristics that preclude the vehicle's safe use on roads. In its guidance, EPA states that not all vehicles used in races are excluded from emissions compliance. Determinations are based on the capability of the vehicle, not its intended use.

This distinction between a vehicle's capabilities and its use is central to EPA's position. Going back as far as 1974, EPA has maintained that it would make determinations on exclusions from the motor vehicle definition based on vehicle design, not intended use. Since that time, EPA has employed that test for a variety of uses including off-road vehicles, kit cars, and imported racecars.

CRS was unable to find a document from EPA before 2015 that explicitly stated that motor vehicles converted to racing were not eligible for exemption. However, nor could CRS identify provisions in the Act or regulations which would explicitly allow for a certified motor vehicle to be reclassified.

In enforcing the tampering provisions, EPA has historically not taken action against individual owners. In all enforcement actions CRS could identify, automakers, parts suppliers, and repair shops were the defendants. CRS could find no instances of EPA targeting owners modifying vehicles for road or track use. Further, CRS could identify no cases where EPA took action against parts suppliers who operated solely in the racing market.

Actions against parts suppliers have often alleged the sale of defeat devices to road vehicle users despite claims by the supplier that the parts were for off-road or racing use only. A key issue is that for motor vehicles modified for racing, in some cases, there may be no way to produce parts that could also not also be used on motor vehicles.

Responding to concerns raised by SEMA and others, an EPA spokesperson stated publicly that the agency remains primarily concerned with "aftermarket manufacturers who sell defeat emission control systems on vehicles used on public roads." This statement may not be sufficient to address concerns of racing-parts suppliers as EPA maintains that their actions may still be illegal even if EPA chooses not to focus enforcement action on them.

At least two bills, H.R. 4715 and S. 2659, have been introduced to address EPA's regulation of motor—of racing vehicles. The bill would amend the Clean Air Act definition of motor vehicle to include competition—to exclude competition-only vehicles and would explicitly exempt such vehicles from the tampering provisions. Policy questions related to these bills include how would EPA implement the new provisions, how the definition change would interact with other federal and state laws, and whether there would be a process for recertifying racing vehicles for later on-road use.

I thank the Subcommittee for its time, and I am happy to answer any questions.

[The prepared statement of Mr. Yacobucci follows:]

**MEMORANDUM**

March 15, 2016

To: House Committee on Science, Space, and Technology Subcommittee on Oversight
From: Brent D. Yacobucci, Section Research Manager, x7-9662
Subject: Testimony for Hearing on “Racing to Regulate: EPA’s Latest Overreach on Amateur Drivers”

Good morning Chairman Loudermilk, Ranking Member Beyer, and Members of the Subcommittee. My name is Brent Yacobucci. I am the Energy & Minerals Section Research Manager for the Resources, Science, and Industry Division of the Congressional Research Service. I have been asked to provide background and discuss CRS’ research on anti-tampering provisions and exemptions within Title II of the Clean Air Act, and to discuss policy options to exempt racing vehicles from those anti-tampering provisions. Congressional guidelines on objectivity and non-partisanship require that I confine my testimony to technical, professional, and non-advocate aspects of matters under consideration, and that I limit myself to questions within my field of expertise. Although I can discuss policy options and potential ramifications, CRS does not take a position on pending or proposed legislation.

I have been with CRS for 17 years in various positions, providing analysis on automotive design, emissions controls, and vehicle-related provisions of the Clean Air Act. I have a bachelor’s degree in mechanical engineering from the Georgia Institute of Technology and a master’s degree in public policy from The George Washington University. I am a member of the Society of Mechanical Engineers and the Society of Petroleum Engineers, although today I am representing only CRS.

Tampering Provisions of the Clean Air Act

On Monday, July 13, 2015, the Environmental Protection Agency (EPA) issued proposed regulations for greenhouse gas emissions from medium- and heavy-duty vehicles and engines.¹ Included in the proposal are provisions that EPA maintains are clarification of long-standing policy, but which the Specialty Equipment Market Association (SEMA) and others argue constitutes new policy restricting vehicle owners’ ability to convert on-road motor vehicles to dedicated racing vehicles, and for parts suppliers (such as those represented by SEMA) from selling retrofit kits and other parts to those owners. The original public comment period ended September 11, 2015. Subsequently, in response to comments received from SEMA² and to present new emissions and modeling data unrelated to racing vehicles, EPA

¹ Environmental Protection Agency and Department of Transportation, "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2; Proposed Rule," 80 *Federal Register* 40137-40766, July 13, 2015.

² Stephen B. McDonald, Vice President, Government Affairs, *Re: Docket: EPA-HQ-OAR-2014-0827*, Specialty Equipment Market Association, Washington, DC, December 28, 2015, <http://www.regulations.gov/#documentDetail;D=EPA-HQ-OAR-2014-0827-1469>.

reopened the docket for comments (limited to the new data and to the issues raised by SEMA) on March 2, 2016; the new comment period is scheduled to run through April 1.³

The key policy question is whether EPA considers a vehicle operated solely for racing as a “motor vehicle,” and thus subject to the anti-tampering and defeat device provisions of the Clean Air Act. Title II of the Clean Air Act provides a definition for, among other things, “motor vehicle.” The sale of a new motor vehicle requires the automaker to supply a “certificate of compliance” with federal emissions standards. Under Section 203 of the Clean Air Act it is unlawful to remove, “bypass, defeat, or render inoperative” any part of a motor vehicle’s emissions control system.⁴

In the Clean Air Act Amendments of 1990, in establishing EPA’s authority to regulate “nonroad vehicles,” Congress explicitly defined nonroad vehicles to exclude those used solely for competition.⁵ However, no similar provision explicitly exempts a racing vehicle from the definition of “motor vehicle” after it has been certified as such. CRS could not identify any other provisions within the Act to explicitly allow or preclude EPA from reclassifying motor vehicles as some other class of vehicle. Thus, at issue is arguably a difference in interpretation between EPA and SEMA. EPA maintains that its position is part of a larger prohibition on reclassifying motor vehicles for any purpose. SEMA, on the other hand, maintains that EPA and the Act’s silence on the topic before 2015 means that such conversions are allowed.⁶

Pursuant to the Clean Air Act Amendments of 1990, in November 2002 EPA established emissions standards for recreational nonroad vehicles and engines – including motorcycles, all-terrain vehicles (ATVs), and snowmobiles.⁷ Within those rules, EPA provided specific procedures and guidance for how new nonroad motorcycles, or “dirt bikes,” can be converted from recreational use to competition-only. Specifically, only nonroad bikes may be converted.⁸ Before doing so, the owner must destroy the original emissions compliance label attached to the dirt bike, and the owner may not then use the bike for recreation. If the owner later sells the dirt bike, he or she must inform the purchaser that it has been modified and may only be used for competition. This process is, to our understanding, based solely on owner compliance, and EPA does not maintain any sort of database of these conversions.

EPA and the National Highway Traffic Safety Administration (NHTSA), part of the Department of Transportation, also provide temporary exemptions for cars and trucks imported for racing purposes. In those cases, importers must follow a more detailed process to request an exemption from EPA and NHTSA. These exemptions are granted on a case-by-case basis. Importers must supply to EPA, among other things, the Vehicle Identification, or VIN, Number, a list of race-specific characteristics (such as roll bars/cages and racing harnesses), a list of characteristics that preclude the vehicle’s safe use on roads (for example, lack of a reverse gear or headlights), and photos of the vehicle. In guidance available on its

³ Environmental Protection Agency and Department of Transportation, “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles--Phase 2--Notice of Data Availability,” 81 *Federal Register* 10822-10826, March 2, 2016.

⁴ 42 U.S.C. §7522(3).

⁵ 42 U.S.C. §7552 (11).

⁶ Specialty Equipment Market Association, *Debunking the Myths: EPA Proposal to Prohibit Conversion of Vehicles Into Racecars*, Washington, DC, February 11, 2016, <https://www.sema.org/sema-news/2016/06/debunking-the-myths-epa-proposal-to-prohibit-conversion-of-vehicles-into-racecars>.

⁷ Environmental Protection Agency, “Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based); Final Rule,” 67 *Federal Register* 68242-68447, November 8, 2002.

⁸ Environmental Protection Agency, *Emission Exemption for Racing Motorcycles and Other Competition Vehicles*, EPA420-F-02-045, Ann Arbor, MI, September 2002, <http://www3.epa.gov/nonroad/2002/f02045.pdf>.

website, EPA specifically states that “not all vehicles used in races are excluded from emissions compliance. Determinations are based on the capability of the vehicle, not its intended use.”⁹

This distinction between a vehicle’s capabilities and its intended use is key to EPA’s position. Going back as far as at least 1974, EPA has maintained that it would make determinations on exclusions from the motor vehicle definition based on vehicle design, not intended use.¹⁰ Since that time, EPA has employed that test for a variety of uses, including off-road vehicles, kit cars, vocational vehicles, and imported racing cars. CRS was unable to find a document from EPA from before 2015 that explicitly stated that conversions of motor vehicles for racing were not eligible for an exemption. However, nor could CRS identify provisions in federal statute or regulations which would explicitly allow for a certified motor vehicle to be classified as something else for purposes of the anti-tampering provisions.

Enforcement of Tampering Provisions

In terms of enforcement of the tampering and defeat device provisions, EPA has historically not taken action against individuals, despite the fact that Congress granted the agency that authority in the 1990 Clean Air Act Amendments. Before 1990, the anti-tampering provisions applied to automakers, parts manufacturers, and repair shops. In all enforcement actions CRS could identify, automakers (original equipment manufacturers, or OEMs), parts suppliers, and repair shops have been the subject of enforcement. Additionally, CRS could identify no instances where enforcement actions were taken against parts suppliers who were operating solely in the racing parts market. Further, CRS could find no instances of EPA targeting enforcement on individuals modifying vehicles, either for road or track use.

Targets of EPA enforcement actions have included large automakers and smaller after-market manufacturers. In some of the supplier cases, settlements between EPA, the Department of Justice, and the defendants were based on the sale of defeat devices to road vehicle users despite claims by the manufacturer that the parts were for off-road or nonroad use only.¹¹ A key issue is that for motor vehicles modified for racing, there may be no way to produce parts that would only operate on modified motor vehicles.

In response to concerns raised by SEMA and others, an EPA spokesperson stated publicly that the agency remains “primarily concerned with cases where the tampered vehicle is used on public roads, and more specifically with aftermarket manufacturers who sell defeat emission control systems on vehicles used on public roads.”¹² This statement may not be sufficient to address concerns of racing parts suppliers as EPA maintains that their actions may still be illegal even if EPA chooses not to focus enforcement action on them.

Legislative Options

At least one bill, H.R. 4715, has been introduced in the 114th Congress to address the issue of EPA’s enforcement of tampering provisions for racing vehicles. The bill would amend the Clean Air Act to exclude vehicles used solely for competition from the definition of “motor vehicle,” and would explicitly

⁹ Environmental Protection Agency, *Procedures for Importing Vehicles and Engines into the United States*, EPA-420-B-10-027, Washington, DC, July 2010, p. 36, <https://www.epa.gov/sites/production/files/2014-02/documents/420b10027.pdf>.

¹⁰ Environmental Protection Agency, “Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines -- Exclusion and Exemption of Motor Vehicles and Motor Vehicle Engines,” 39 *Federal Register* 32609, September 10, 1974.

¹¹ Department of Justice, *Federal Settlement Targets Illegal Emission Control “Defeat Devices” Sold for Autos*, Press Release 07-490, Washington, DC, July 10, 2007, https://www.justice.gov/archive/opa/pr/2007/July/07_enrd_490.html.

¹² Bob Sorokinich, “No, the EPA Didn’t Just Outlaw Your Race Car,” *Road & Track*, February 9, 2016, <http://www.roadandtrack.com/motorsports/news/a28135/heres-what-the-epas-track-car-proposal-actually-means/>; Patrick George, “The EPA’s Crackdown on Race Cars, Explained,” *Jalopnik*, February 9, 2016, <http://jalopnik.com/the-epas-crackdown-on-race-cars-explained-1758111546>.

exempt such vehicles from the anti-tampering provisions of the Act. The bill would direct EPA within 12 months of enactment to finalize regulations to implement the changes.

However, many enforcement questions would likely remain if H.R. 4715 or similar legislation were enacted. For example, how would EPA implement the new provisions? The agency could choose among a range of options with varying stringency. On the less stringent side, EPA could require actions similar to those for competition-only nonroad vehicles, such as racing dirt bikes, where the owner is required to destroy the emissions compliance label – or the certificate of compliance in the case of a former motor vehicle – and that such actions would be based on expectations of owner self-compliance. On the other end of the spectrum, EPA could require detailed information similar to that required for imported racing cars. The agency could also require that for de-certification the vehicle owner surrender the certificate of compliance to EPA and have the car registered in a database of converted vehicles. If that were the case, racing parts suppliers could query the database to verify that individuals are purchasing parts solely for competition vehicles.

A second question raised by this legislation is whether there will be unintended interactions with other federal and state laws. Various federal agencies, including the Department of Transportation and Customs and Border Protection within the Department of Homeland Security, have jurisdiction over the import, export, sale, and/or use of motor vehicles. Modifying the definition of motor vehicle in the Clean Air Act may or may not affect definitions in other parts of the U.S. Code. Each state also has its own statutes, regulations, and procedures for defining, registering, and regulating motor vehicles and racing vehicles. Currently in many cases state and federal definitions and classifications differ. It is possible that this legislation could lead to further confusion, with more instances of a vehicle being considered a motor vehicle for some federal agencies and/or states, and a non-motor vehicle for others. The ramifications of this are beyond the scope of my testimony.

Finally, another question is whether H.R. 4715 or similar legislation would or should establish authority for re-certifying former competition vehicles as motor vehicles in the future, allowing their return to the road, or whether such a process would be a “one-way valve,” allowing for conversion to racing but not back.

Please keep in mind that these are only some of the potential policy questions related to the bill. I thank the Subcommittee for its time, and I am happy to answer any questions you have.

Brent Yacobucci is the Research Manager of the Energy and Minerals Section of the Congressional Research Service, where he has worked for 17 years. He manages and coordinates the research of a team covering topics such as fossil and renewable energy development, electricity supply, and critical minerals for Members of Congress and their staffs. His own research has focused on energy and environmental issues such as biofuels, advanced vehicle technologies, vehicle emissions standards, and climate change. He has authored reports for Congress and journal articles on topics such as U.S. climate change legislation, regulation of motor vehicle emissions, and U.S. ethanol imports from Brazil and other countries. Brent received his Bachelor's degree in Mechanical Engineering from the Georgia Institute of Technology and his Master's degree in Science, Technology, and Public Policy from The George Washington University. Previously he worked with the U.S. Department of Energy's National Energy Technology Laboratory and the Alliance to Save Energy. He was also an intern with the U.S. Embassy in Lomé, Togo. He is a member of the Society of Automotive Engineers, the Society of Petroleum Engineers, and the U.S. Association for Energy Economics.

Chairman LOUDERMILK. All. I thank all the witnesses for their testimony, and the Chair recognizes himself for five minutes for questions.

Mr. Sheheen, you had mentioned the economic impact that auto racing has in the United States. Could you repeat what that number is?

Mr. SHEHEEN. In North Carolina alone, it's a \$6.2 billion-a-year industry, which is a significant number.

Chairman LOUDERMILK. \$6.2 billion just in North Carolina?

Mr. SHEHEEN. Yes, sir, \$6.2 billion-a-year industry. I live in Mooresville, North Carolina, which is called Race City, USA. The majority of the industry in and around our area right there is all racing related whether it's NASCAR Sprint Cup teams all the way down to teams competing in Supercross. There's sports car racers, IndyCar racers, drag racers. They're all there. It's not just those people but the cottage industries that have sprung up around that, people that supply not just the pieces and parts and components that make the cars not only go faster but more efficiently and quicker and safer but also the people that work in public relations industries, media like Speed Sport. You have marketing firms that just deal specifically with motorsports.

There is even a gentleman in Concord, North Carolina, a neighboring city, by the name of Sam Bass who started his career with a passion for motorsports as a young kid who just liked to draw racecars. He has turned that into a thriving business that not only paints pictures of cars but designs paint schemes and the uniforms that the crews and the drivers wear, and he has a thriving business out of that.

So there's a huge cottage industry that makes up that massive \$6.2 billion.

Chairman LOUDERMILK. And as a race fan, I know that NASCAR is the icon of our motorsports here in the United States, and it's a significant part of Americana from catch phrases such as "boogedy boogedy boogedy" to the checkered flag to the ancillary businesses such as clothing and souvenirs. A race is a cultural experience, and as you look at those that have become our best-known drivers, those that you hear about all the time from your testimony understand, these guys just did not walk in one day and become a NASCAR driver. They worked themselves up through the ranks.

Mr. SHEHEEN. That is exactly correct.

Chairman LOUDERMILK. And those ranks are the industry that would be directly impacted by this EPA rule. Am I correct?

Mr. SHEHEEN. That's correct, and for example, let's take the Pettys, the first family of American motorsports, if you will, beginning with Lee Petty through King Richard Petty, his son Kyle Petty, and then on to Adam Petty, his son. Of those four generations, three of them all utilized production vehicles that were modified for racing that allowed them to have the opportunity to grow.

Another gentleman out in Roseville, California, Bill McAnally, if you want to take it down a step or two just to show how it impacts all the way across the board, Bill began racing in 1986 at the age of 21 years old in a street stock division in a 1970 Chevelle that was modified from production to street to racetrack use only. Bill

is now 50 years old, owns Bill McAnally Racing, and has two teams competing in NASCAR's K&N West Division and two teams competing in NASCAR's K&N East Division. He employs 43 people. He has won multiple championships. He's one of the leaders in NASCAR's competition on the regional level, and he has started careers for numerous individuals that have moved on into NASCAR's top divisions, whether it's his crew chiefs, crew members or drivers. So there's another career that never would've happened if this regulation had been passed.

Chairman LOUDERMILK. And thank you.

And Mr. Kersting, I have a question.

Mr. KERSTING. Chairman Loudermilk, I just wanted to point out that in addition to that ladder effect for professional racing, there is a vast amount of sportsman racing going on out there in the country. Every day, every year we've got a ton of people out there enjoying the sportsman categories, and those guys and women are generally driving converted vehicles.

Chairman LOUDERMILK. And I've had the opportunity at Atlanta Motor Speedway to go in the drivers' meeting and do their devotion before the race and meet with the drivers, and they're impressive.

But Mr. Kersting, I'd like to ask you a question. How did your organization, the Specialty Equipment Market Association, learn about the EPA's proposed decision to enforce the Clean Air Act on non-road vehicles for competition?

Mr. KERSTING. Well, as you would expect, SEMA as an organization representing manufacturers and distributors in this category, we maintain offices here in Washington, D.C., to monitor for proposed regulations, proposed legislation, and I'd point out that most of the race sanctioning bodies have the same. The vehicle manufacturers are represented here in a similar fashion. And ordinarily, the Federal Register, which is the document that alerts us to new proposed regulations, is very plain in representing what the new regulations pertain to, and that is the public notice portion of our regulatory process, and in this case, not only did SEMA not find that regulation when it was initially proposed, not a single stakeholder that we're aware of identified that regulation, and the reason was that it was tucked into a proposed regulation on medium- and heavy-duty greenhouse gas emissions, and it didn't bear a heading in terms of its chapter in the table of contents that would indicate that racecars are being regulated. Basically it was under a section for other provisions.

So there's really no easy way to find it. Our staff found it in December. This rule was introduced in July through kind of an indirect reason, and thankfully we found it.

So it is unusual that a regulation that would have such far-reaching effect would be tucked away like that, and you know, I mentioned that SEMA has a good working relationship with regulatory officials at the EPA, at the California Air Resources Board. We work with them regularly. And so it was quite a surprise to us that this approach to solving the problem that EPA perceives was the approach used and that we weren't informed about it at all.

Chairman LOUDERMILK. And when you found it, I understand it was after the comment period had closed?

Mr. KERSTING. That's correct. So that regulation had an official comment period. Fortunately, the agency has latitude to continue to accept comments, and I think under the circumstances, they accepted our comment, and it is a part of the docket.

Chairman LOUDERMILK. So the EPA has re-offered the provision that we're discussing here today for public comment. Did the agency include any justification or analysis when it reopened this issue for comment?

Mr. KERSTING. Not that I'm aware of.

Chairman LOUDERMILK. In your testimony, you discussed the impact on ancillary sales as a result of the EPA's rule. Would you please describe the impact in a little more detail?

Mr. KERSTING. So as an organization, SEMA represents manufacturers who have sales in the range of about \$32 billion a year. For us to isolate just racing sales was something that we were able to do in preparation for the hearing here, but for us to be able to really look at the related sales, we would need a little bit more time, and we'd be happy to provide this Subcommittee further information as we have the opportunity to collect it.

But what we're talking about here is that if Ralph takes his race vehicle to the track on Saturday, he's going to be towing that vehicle with a truck. There's going to be a trailer. There's going to be a whole range of equipment that is sold in connection with that truck and trailer, all sales that make up part of that \$32 billion industry that we represent, not to mention all the ancillary support services, the folks who are there to take care of that vehicle, to work on it, provide services for it and so forth. So—

Chairman LOUDERMILK. Hoosier Tires.

Mr. KERSTING. Yes, well, and really you're talking about a lot of local race prep shops that get a lot of business through these sportsman category activities, and we just didn't have the time to pull that kind of information together but it's in the billions and substantial.

Chairman LOUDERMILK. My time has exceeded its limit.

At this point I'll recognize the Ranking Member, my good friend, Mr. Beyer, from Virginia.

Mr. BEYER. Thank you, Mr. Chairman.

I want to thank all of you for coming on March 15th. You know, you should beware the Ides of March. Maybe he's the one that needs to be worried about that.

It was interesting to hear that this is just the first hearing, and if this ends up being the committee of markup for Mr. McHenry's bill, it would be excellent, Mr. Chairman, to get the EPA to come to actually hear their thoughts on the consequences of H.R. 4715, especially with respect to enforcement against manufacturers for the Fast and Furious, not the racecar drivers.

Mr. Yacobucci, let me simplify and clarify since we don't have the EPA here. Number one, that the EPA has always thought that it violated the Clean Air Act to modify emissions on a certified car, and that the recent clarification was not a matter of sneaking something in. In fact, it may be one of the reasons why they reopened it is that they thought it was a clarification of what they thought all along. Number two, that it was never the intent of Congress to prohibit racecars from being modified. Number three, that

this probably is why the EPA has never enforced this against racecars or racecar drivers.

Mr. YACOBUCCI. To the first point, that is our understanding, that that is EPA's position. On the second point, I'm not going to weigh in on the intent of Congress. Certainly we could do a legislative history for you and get hearing documents and those sorts of things, but I won't actually speak to Congress's intent on language they did or didn't include in the act.

Mr. BEYER. I would love your CRS perspective on why we have laws and regulations on the books that we don't enforce. Let me give you a Virginia example.

One of my friends, a state senator, tried to repeal a Virginia statute that makes it illegal to have sex outside of marriage. It's a \$250 penalty and no jail time. And when he went to repeal it, since it's clearly not an enforced law, it turned out that the Commonwealth attorneys wanted to use it in cases when they plead down something from a more serious case, they needed something to charge them with so that they withheld it.

Is there—from a CRS perspective, is there any reason to keep a law on the books or regulation on the books that has not been enforced and no intention to enforce it?

Mr. YACOBUCCI. We won't take a position on that, sir. We would take no position on legislation.

Mr. BEYER. Well, then I'll ask Mr. Kersting that.

Mr. KERSTING. Congressman Beyer, if I may, I can provide a very relevant portion of the legislative history real quickly. This was discussion during the Conference Committee hearings on the Clean Air Act Amendments in 1970, which actually put into place the relevant portion of the law that EPA is turning to today. Representative Nichols posed the following question to Chairman Staggers as follows: "I would ask the distinguished Chairman if I am correct in stating that the terms vehicle and vehicle engine as used in the Act do not include vehicles or vehicle engines manufactured or modified or utilized in organized motorsports racing events, which of course are held very infrequently but which utilize all types of vehicles and vehicle engines." Mr. Staggers in response: "In response to the gentleman from Alabama, I would say to the gentleman they would not come under the provisions of this Act because the Act deals only with automobiles used on our roads in everyday use. The Act would not cover the types of racing vehicles to which the gentleman referred, and present law does not cover them either."

Mr. BEYER. Mr. Kersting, let me move on because that was part of the written testimony that you had, which is good.

I understand that SEMA often works with EPA to target aftermarket parts manufacturers who intentionally seek to violate environmental laws. In H.R. 4715, Mr. McHenry's bill, is there a concern, a reasonable concern, that enforcement against those few bad actors in the aftermarket parts industry will be more difficult? Is there any concern that legislation that simply says any cars competition only or racing-only vehicle gives these people carte blanche to go after the street folks?

Mr. KERSTING. I think the problem is that the proposed remedy here is overkill. SEMA is willing to work with the regulators to address the problem of illegal parts for street use, but to draw a circle

in express terms that renders illegal all of the race vehicles and all of the racing activity that is part of the motorsports tradition in this country is unnecessary in order to address what is otherwise a very small portion of the overall emissions that are emitted by vehicles on the roads in this country.

Mr. BEYER. So let me clarify. You'd rather do this through rule and regulation with the EPA rather than legislation?

Mr. KERSTING. I don't even think it requires rule and regulation. I think that in fact EPA has a history of recognizing that Congressional intent we were just talking about, and we would work out policies that would address how they would handle the matter of illegal parts.

Now, the law already exists that gives the EPA enforcement authority for any illegal parts or modifications that show up for street use, and that's really where we need to focus the discussion.

Mr. BEYER. There's been some discussion about whether it makes sense to do an exemption or create a different classification for certified cars that become racecars. Do you have an opinion on which is more workable?

Mr. KERSTING. Well, because I think that the Congress was clear when we originally designed the structure of the law that these vehicles weren't considered, I mean, it's pretty simple. Motor vehicle, you have authority. It is a vehicle that's on the roads. If a vehicle is decommissioned, taken out of that use, that's where the authority resides, right? Now we're on a racetrack. That vehicle is no longer subject to the regulatory authority of the EPA. I think that's the right outcome, and I would rather focus the energies and efforts on the law as it exists than trying to outlaw an entire category of activity that heretofore has been treated as legal. Look at entire institutions that have grown up over that time converting street vehicles for racing.

Mr. LAHOOD. [Presiding] The Chair now recognizes Mr. Posey.

Mr. POSEY. Thank you very much, Mr. Chairman, and I thank the Chairman for calling this hearing, and I'm very grateful to the witnesses for their attendance here.

There's been two references to the fact that there's not a representative from EPA here, and I just would like to remind everyone that the other side of the aisle had an opportunity to bring in whatever witnesses they desired to. They chose to bring in somebody from CRS. Maybe that's because the last couple times we had the Director, the Secretary of EPA here, every time I asked her a question she said I don't know, I'm not a scientist, but everything's based on science. Maybe that's why they chose not to have somebody from EPA here. At least we can get some answers from CRS.

And so Mr. Yacobucci, the rule in question here that was attempted to be implemented by EPA, just a yes or no, certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely for competition or if they become non-road vehicles or engines. Is that correct?

Mr. YACOBUCCI. That is my—I'd have to look at the text but I'm pretty sure that is the text, yes.

Mr. POSEY. Do you have any idea why EPA would have been so sneaky trying to implement this if it was so unimportant?

Mr. YACOBUCCI. I won't comment on EPA's intent on this. From everything I have read in terms of their argument or the rationale is that again that this is just a continuation of a longstanding policy. The definition of motor vehicle in the Act refers to the design of the vehicle, not its intended use. If you want, I could pull the text of the definition.

Mr. POSEY. I have the definition here.

Mr. YACOBUCCI. But so EPA's argument is that it can police design, not the intent of the owner after the vehicle is designed and manufactured. SEMA and others obviously disagree with that interpretation but EPA argues that it's consistent with—

Mr. POSEY. But then again, that's no reason to try and sneak something through without advertising it, without disclosing it anywhere, I just think it's despicable the way the agency tried to push this through without anybody knowing about it secretly, clandestinely.

Mr. Kersting, you mentioned in your testimony that you believe the EPA violated the Administrative Procedures Act obviously, and so do I. Why do you think they tried to do it?

Mr. KERSTING. You know, I am really not certain. I think we were surprised and disappointed because we do work hard to collaborate and come up with the best approaches for regulating our industry. The matter of the California Air Resources Board certification program is a very extensive, detailed program to give parts manufacturers the opportunity to test and demonstrate parts as legal for street use, and those parts then carry designation as certified parts from there forward. That takes a lot of work and effort, and EPA knows that we're working hard to educate our industry. We get new companies coming in to the industry all the time, and we are trying to help them as they move toward getting their parts in compliance.

So I'm disappointed about it. I can't imagine really what the intentions were.

Mr. POSEY. Well, that's what shocked me. I know the record that SEMA has for working with the agencies, trying to make things a win-win situation so that we don't have losers on either side, that we do it fairly, and I was stunned by it.

Mr. Sheheen, do you see any unfairly discriminating issues with the way they have written this rule as to one group of people or another group of people, one level or another level?

Mr. SHEHEEN. Well, actually, I believe it could impact quite a few levels obviously from the amateur level that we're talking about where drivers who are not able to afford full-blown million-dollar, hundreds of thousands of dollars' worth of racecar parts. They just can't do that, go compete in NASCAR's top division or IndyCar racing. It would certainly wipe them out.

But at the same point, there's a lot of manufacturers that would see a lot of problems with this. For example, Cadillac competes in the Pirelli World Challenge Series, which utilizes basically this very form of racecar production vehicle. They pull a racecar, what they intend to be a production car, straight off the production line randomly and turn it into a racecar but basically using that production vehicle. This is something that many manufacturers such as General Motors and Ford and many others use to not just find

out what their cars are capable of doing, how to make them work better, perform better, more efficiently, safer, but also they take engineers and put them with these teams and immerse them in these programs so that they learn. So that is knowledge that then gets transferred to what you and I drive on the street. So yes, we would be wiping out a complete amateur level all across the country but also the major automotive manufacturers in this country would take a huge hit from this as well.

Mr. POSEY. Thank you. My time is expired. I yield back.

Mr. LAHOOD. Thank you, Mr. Posey.

The Chair now recognizes myself for five minutes for questions.

I want to thank the witnesses for being here today and for your testimony. I appreciate it.

The district I represent in central and west central Illinois is a very rural district. I have five racetracks in my district. I have lots of tractor-pull competitions throughout my district, and I've been amazed at the industry that's really been created by my racetracks and whether those are garages or mechanic facilities, small- and medium-sized businesses throughout my district, and if you come to my district in the summertime, you know, the opportunities that have been created by the racing industry is really amazing. These tracks in my district almost on every weekend are full of families and young people, people that go there for enjoyment and watching, you know, the activities that go on there.

And I guess what puzzles me in sitting here in the hearing today is, we as policymakers look at implementing a rule or passing a law to solve a problem that's out there, something that needs to be fixed, a void that's there, and when you think about the 46 years of precedent that was mentioned earlier and why this is being done now, I mean, it's what makes people cynical about government in some ways, distrustful that an agency like this can come in and implement something like this, and I'm trying to see, you know, where are the complaints out there, where are the issues that we need to fix, and I don't see it in my district whether that's, you know, newspaper articles being written or protesters at events or police reports being filed, anything that kind of anecdotally or otherwise would tell us there's a problem that needs to be fixed here, and I would guess in your industry in North Carolina or anywhere else in the country. Have you seen that anywhere, you know, people complaining we need to fix this? Mr. Kersting, I would ask you that first.

Mr. KERSTING. So I think this is kind of Inside Baseball with the regulators. This is something that in their area of concern they pay some attention to but I think it's important to recognize what we're really talking about here. Even in the instance where the EPA is concerned about a part finding its way onto a street vehicle, we're talking about the incremental emissions difference between whatever is the certified equipment and whatever is the racing part, and we're looking at the emissions that are generated there in the scheme of vehicle miles traveled annually by a car park of 200 million vehicles. So how much is this is really going on by way of a percentage of overall automotive emissions? It's a very small fraction. And in that regard, I believe that EPA should work with the industry to come up with better approaches to regulate at the level

they're really aiming at, that is to say illegal parts going on street vehicles. To do that by drawing a line around racing and calling any conversion of street vehicles any alteration from the certified configuration illegal is ridiculous overkill, and really kind of unrelated.

Mr. LAHOOD. Mr. Sheheen, do you have a comment on that?

Mr. SHEHEEN. You know, I would tell you that the thing that most people might complain about at the racetrack is that their guy didn't win. They're just hoping it was the other guy. You know, you're talking about an industry here where if we take this away, the opportunity for the amateurs to go compete on a Friday night or a Saturday night, as you mentioned in your district there, you're taking away their passion. These are people that don't own a boat to go out on Lake Michigan. They don't have tickets for the season with the Bears or the Cubs. This is what they do. Their whole family comes together and works and gets the car ready. They put everything they have into that. This is their lifestyle. This is their hobby. Most importantly, this is their passion, and we're talking about potentially taking that away from them.

And if you look at it from a grander scale, Henry Ford over 100 years ago drove the Sweepstakes, which was a modified production vehicle, to a victory that kicked off what is now the Ford Motor Company, and a massive industry has come out of that, and still to this day that massive industry utilizes modified production vehicles so they can learn so that we can continue.

Mr. LAHOOD. Thank you.

Mr. Kersting, a particular question. The EPA claims that by proposing this rule, they're trying to stop the sale and use of illegal emissions defeat devices. Would this rule in any way assist the agency in this goal?

Mr. KERSTING. So a defeat device by definition is a part or a modification that will be done to a vehicle on the roadways. There are laws in place, and the EPA and the California Air Resources Board have used them for many, many years to regulate the industry. They've even cited instances in some of their recent releases about their enforcement. That's the approach they should be using to address the problem: find egregious cases and go after those egregious cases. To outlaw motorsports, to outlaw the conversion of vehicles for racing doesn't seem to really be a direct hit.

Mr. LAHOOD. Well, and to your point, I mean, it seems like EPA has the adequate enforcement mechanism to do this. They haven't done that, and it seems as a former prosecutor, if you have appropriate enforcement out there and you send a deterrent message, you highlight a number of cases that are, you know, you know, cases that can be exposed at a higher level, enforce those and send a message in the industry, we're not going to tolerate that.

Mr. KERSTING. Right. The law is there. It is—and it's not as if the EPA doesn't enforce at all. So I think if they are really interested to work on this, we'd be interested to work with them, and actually have been working with them. We have been having discussions, active discussions, with the EPA for the last four years, and so I don't know. This is—as I say, it's a surprise. It's an odd tactic. And the issue that we're all gathered here for actually is that there's a proposed rule out there. If that rule goes into effect

and it can't be defeated in a court challenge, we're living with a matter that all of this equipment and all of this activity is illegal.

We were talking a little bit earlier about having laws on the books that don't get enforced. The matter that EPA at this juncture says well, we really don't intend to go after racecar drivers and their equipment, how could anyone rely on a situation where the activity they're engaged in which in many cases requires quite a lot of time and investment is illegal. It makes no sense.

Mr. LAHOOD. Thank you.

We're going to do a second round of questions here, and we'll recognize Mr. Posey for a second round.

Mr. POSEY. Thank you very much for the second round, Mr. Chairman.

Mr. Yacobucci, would you agree with the following statement: Since 1970, when the Clean Air Act was enacted, industry and enthusiasts have had no doubt that it is legal to modify and race a street vehicle as a racecar as a multibillion-dollar marketplace attest.

Mr. YACOBUCCI. Sir, in general I would agree with that. I think that most drivers—and this is anecdotal from my own speaking with people who are in amateur racing. I would say most folks probably think—or think that what they are doing is legal. But I do know of some folks who basically say yeah, I'm pretty sure this is a violation but, you know, okay.

Mr. POSEY. Like what? Give me an example? Who would think it's a violation?

Mr. YACOBUCCI. I know some racers who've modified their vehicles who have basically said that their interpretation is that this is a violation that since they are modifying their street vehicle and they have not gotten some sort of exemption from the EPA explicitly, that they are maybe in violation of the standards.

Mr. POSEY. See, I know hundreds, if not thousands, of people who race, and I don't know any of those.

Mr. YACOBUCCI. I think it is the vast minority, sir.

Mr. POSEY. When we talk about asides, you know, if EPA succeeded in destroying this industry where people safely for the public and otherwise compete on private property, it would just be devastating to force that back onto the nation's highways and byways and side streets just by trying to harm an industry, you know, unfairly.

Mr. Sheheen, would it be fair to say that under the proposed rule, the Sports Car Club of America, Lemans, tractor pulls, et cetera would all become illegal?

Mr. SHEHEEN. Yes. This would greatly impact all of those divisions and many, many more. In kind of addition to what Mr. Yacobucci was saying, in all the different garage areas, pit areas, paddocks that I've been in, I have never met a racer who has ever thought that they were illegal with anything that the EPA was proposing. They might wonder if they're going to meet the tech inspector's rulebook as to whether or not they've got too much weight shifted to one side of the car or the other, but never have I ever been in a conversation from the very top levels of motorsport to the very bottom layers where anybody has ever even discussed the EPA and what the regulations are and how it might impact motor-

sports until this came out, and when this came out, everybody, for lack of a better way of putting it, freaked out because they could not believe that this was out there or a potential problem for them. So no, rulebook-wise, nobody ever worried about this particular rule, but yes, in answer to your original question, all of those divisions and so many more from the very top to the very bottom would be impacted.

Mr. POSEY. Thank you.

Now, Mr. Kersting, would you explain the difference between defeat devices and racing equipment? The EPA seems to be fixated on defeat devices.

Mr. KERSTING. Right. We talked about that just a moment ago. Parts for racing, you don't have to be concerned about the emissions impact. A defeat device by definition is a device or a modification that would have an impact to take a vehicle out of compliance, that is, a vehicle in use on the roadways. So as we discussed, there are clear statutory and regulatory provisions to address that, and that's where we believe the EPA needs to put the focus.

Mr. POSEY. It just seems like common sense. If the effort is to attack defeat devices, you just enforce the law against defeat devices that is already in effect, and why mention anything else? I just wondered if anyone else could tell us that.

Mr. KERSTING. It's something that—again, we're here because this is such an unusual step, and I believe the approach is so misdirected that Congress reacted with proposed legislation within a couple of weeks of learning of this.

Mr. POSEY. Well, there's always going to be the omnipresent offenders of the nonexistent problems of the people, and thank you, Mr. Chairman, for the second round.

Mr. LAHOOD. Thank you, Mr. Posey.

The Chair now recognizes Mr. Beyer for five minutes.

Mr. BEYER. I'd like to first clarify Ranking Member Johnson's testimony about the EPA being invited. Up until March 4th, the Minority Committee staff was under the assumption that the Majority actually intended to invite the EPA because it made the most sense to have them here. When they found out on March 4th that the Majority wasn't going to invite, they went to the EPA, who said that it was going to take three weeks to identify a witness, to write the testimony, then they have to clear both the agency and clear the OMB, and that everybody already apparently knows this is a three-week process. So that's why they're not here.

I do hope that if we are the Committee of markup for H.R. 4715 that the EPA has a chance to talk about the implications of 4715 on the people we actually want to enforce the law against, not the racecar drivers.

By the way, I also want to clearly resist the idea that our job here is to demonize the EPA. I know they were referred to as despicable recently. You know, the EPA reopened comments, a sign of good faith. I think it's pretty clear that the EPA since 1970 has thought that this was the law, that it wasn't a matter of burying something that was brand new. It was a clarification in an overall rule stuff. I think it's unfortunate that we keep making the EPA the bad guy here, especially when they've never enforced this

against racecar drivers and there was never any intention to move forward and take it against racecar drivers.

I do think that we need to be careful about the egregious cases, as Mr. Kersting mentioned, but let me quote—I think my friend Mr. Posey says that things of no importance to the general public. Essentially we were talking about the fear that there might be enforcement rather than actual reality right now.

Mr. Yacobucci, the California Air Resources Board has a program that permits aftermarket auto parts manufacturers to get their parts certified by California under an executive order. This shows that their installations would be compliant with the Clean Air Act and not violate emissions control regulations but they also have a program to grant exemptions for compliance with these regulations for competition-only racecars. Do you believe the California laws on this issue could be a roadmap for federal legislation? Is there something we could learn from what California does that would help us?

Mr. YACOBUCCI. I mean, certainly we can learn from any policy, you know, state or local or federal, to help us write new policy. Clearly, California has a structure that works for them, and the question going forward would be, you know, either under this stat—I'm sorry—under the proposed bill or under existing statute whether EPA if they were to grant or have imposed upon them from the legislation an exemption for racing vehicles, the next question would be what would be the processes for exempting specific vehicles, for example, would the agency require registration similar to that for imported racing cars where the vehicle owner submits the VIN number, information about the vehicle's characteristics for racing, things that make it non-road legal, and then basically would that information be maintained in a database where a parts supplier could then query the database and say we are selling this part to this owner of vehicle XYZ and it is thus checked off so that there's some sort of verification process.

On the other end of the spectrum, the way things are done right now with competition non-road vehicles is largely based—or is based on owner self-compliance, and as I said, to our knowledge, EPA doesn't maintain a database. So there's a real range of how this could be implemented whether it's under existing statute, if it was determined that existing statute was sufficient, or if new statute is required, something like H.R. 4715. There's a real range of how that would be implemented or could be implemented.

Mr. BEYER. Thank you.

Mr. Kersting, a short question. Do folks who modify their racecars, as Mr. Sheheen talked about, the many, many people, do they typically work with their local DMVs to brand the title, get rid of the private tags they'd have to drive it on the streets?

Mr. KERSTING. I think that the matter of decommissioning, so to speak, a vehicle is a state-by-state matter, and I can't say I'm familiar with it in all states. But I believe that removing the plates, discontinuing registration are typically the sort of things that take a vehicle officially out of use as a motor vehicle. For example, I think state insurance laws vary on whether and when a vehicle needs to be insured and so forth, and those are the sort of things that I think we could look to to say okay, this vehicle's officially out of use.

Mr. BEYER. Okay. All right. Thank you very much.
Mr. Chair, I yield back.

Mr. LAHOOD. Thank you, Mr. Beyer.

Without objection, the email from the Minority staff requesting that the Chairman invite the witness from CRS and the email sent to all Committee staff and Members containing the list of invited witnesses are entered into the record.

[The information appears in Appendix I]

Mr. LAHOOD. I want to thank the witnesses for their testimony here today and look forward to our dialog on this.

The record will remain open for two additional weeks—

Mr. BEYER. Mr. Chair, a point of—

Mr. LAHOOD. —for additional comments and written questions from Members.

Mr. BEYER. Will the Chair yield?

Mr. LAHOOD. And at this time the hearing is adjourned.

[Whereupon, at 11:50 a.m., the Subcommittee was adjourned.]

Appendix I

ADDITIONAL MATERIAL FOR THE RECORD

REPORT SUBMITTED BY REPRESENTATIVE BARRY LOUDERMILK



United States Motorsports Association
 Non-Profit Organization
 631 Brawley School Rd.
 Suite 300 PMB #149
 Mooresville "Race City USA", NC 28117

March 09, 2016

The Honorable Lamar Smith
 Chairman, Committee on Science, Space,
 and Technology
 U.S. House of Representatives
 2321 Rayburn House Office Building
 Washington, D.C. 20515

The Honorable Eddie Bernice Johnson
 Ranking Member, Committee on Science, Space,
 and Technology
 U.S. House of Representatives
 394 Ford House Office Building
 Washington, D.C. 20515

Dear Chairman Smith and Ranking Member Johnson:

The United States Motorsports Association would like to express its appreciation for H.R. 4715, the Recognizing the Protection of Motorsports Act of 2016 (RPM Act) introduced by U.S. Representatives Patrick McHenry (R-NC), Henry Cuellar (D-TX), and Richard Hudson (R-NC). This is crucial to ensure the stability and ongoing growth of the Motorsports Industry.

There are race tracks in all 50-States, hundreds of thousands of competitors, millions of enthusiasts and fans all producing billions in economic impacts to jobs, tourism, innovation, education and much more. This economic driver will be adversely affected by any additional EPA mandates to competitive vehicles being used on non-public roads. We are especially concerned about the negative impacts to thousands of small businesses that rely on the racing industry.

The EPA has done good work in general to create a cleaner more efficient automotive environment and overall health, and the USMA is in support of those efforts. However, the USMA and its membership have serious concerns with the EPA's interpretation of the Clean Air Act and its overreaching regulation of this issue. Supporting Motorsports in America means supporting a 100-year old industry that provides far more than entertainment. Our racing community is made up of a diverse group of job creators, innovators, and economic contributors.

Thank you for hearing our concerns and taking the time to understand the full impacts of this issue. Please do not hesitate to contact us for any questions or further information.

Shawn Stewart

A handwritten signature in black ink, appearing to read "Shawn Stewart".

Executive Director
 United States Motorsports Association (USMA)

USMA Statement of Purpose: To Educate and Promote the Powerful Impacts of American Motorsports.



United States Motorsports Association
Non-Profit Organization
631 Brawley School Rd.
Suite 300 PMB #149
Mooresville "Race City USA", NC 28117

STATEMENTS FROM MOTOSPORTS INDUSTRY LEADERS:

Lucas Oil Products, Inc. | MAVTV

Robert Patison, Executive Vice President Lucas Oil and President of MAVTV

"Lucas Oil has made a tremendous investment into the competitive racing market. Our company is involved in over 300 annual events that boost local economies and have added jobs both within our company and to the regions these events are held. We support and thank Representatives McHenry, Cuellar and Hudson for their introduction of this bill. This bill helps ensure that Lucas Oil continues to invest in the American Racing Industry."

Richard Childress Racing (RCR)

Torrey Galida, President of Richard Childress Racing Enterprises, Inc.

"Beginning as a childhood dream of becoming a race car driver while selling peanuts at a local race track, Richard Childress bought his first race car for \$20 and worked out of his home garage. He went on to build what is widely considered one of the most legendary organizations in motorsports history. Today RCR employs hundreds of fabricators, engineers, business professionals and many others. In my time working for Ford Motor Company and throughout the racing industry I've seen many other similar motorsports success stories. Many of these stories began tinkering with a vehicle that was no longer useful on the road, but was rebuilt for the race track, often inspiring the next great innovation or business startup. It's the depth of our industry that is often overlooked. Thank you to the Members of Congress who are standing up and taking appropriate action with the RPM Act."

University of Northwestern Ohio

Steve Farmer, UNOH Vice President Corporate Development

"The University of Northwestern Ohio educates thousands of high performance technicians each year. A highly skilled and specialized workforce is in high-demand by race teams, performance machine shops, race tracks and sanctioning organizations. To better serve our students and the motorsports industry UNOH owns and operates Lima Land Motorsports Park, a 1/4 Mile Dirt Racing Track. UNOH would like to thank Members of Congress for taking the time to fully understand the gravity of the EPA added regulations, and for their actions to protect Motorsports and all that it provides our future generations of automotive and performance technicians."

USMA Statement of Purpose: To Educate and Promote the Powerful Impacts of American Motorsports.

DOCUMENT SUBMITTED BY REPRESENTATIVE DONALD S. BEYER, JR.

DOCUMENTS FOR THE RECORD

Subcommittee on Oversight
Committee on Science, Space & Technology

Racing to Regulate: EPA's Latest Overreach on Amateur Drivers

Tuesday, March 15, 2016
10:00 a.m. – 12:00 p.m.
2318 Rayburn House Office Building

Pasternak, Doug

From: Callen, Ashley
Sent: Friday, March 04, 2016 6:44 PM
To: Pasternak, Doug
Cc: Marin, Mark; Brazauskas, Joseph; Colliati, Drew; Weerasinghe, Pamitha; Gallo, Marcy
Subject: Re: * EPA Racing to Regulate Hearing *

Hi Doug,
I don't think we are 100% sure yet. I do think it's safe to say there will be someone representing SEMA's views. Hope to know more early next week and will be in touch.
Have a nice weekend, Ashley

Sent from my iPhone

On Mar 4, 2016, at 5:12 PM, Pasternak, Doug <Doug.Pasternak@mail.house.gov> wrote:

Hey folks,

Can you tell us who you are planning to invite as witnesses for the EPA/Race Car hearing? I assume from our meeting today that SEMA will be one of the witnesses. Are you planning to invite EPA? Anyone else?

As I think those at the meeting with SEMA today could tell we are still trying to figure out who we might invite and are still trying to educate ourselves on this issue. But any guidance you can provide on the witnesses you intend to invite would be very helpful.

Thanks very much.

Enjoy the weekend.

Best,

Doug

Pasternak, Doug

From: Brazauskas, Joseph
Sent: Monday, March 07, 2016 3:59 PM
To: Callen, Ashley; Pasternak, Doug
Cc: Marin, Mark; Colliati, Drew; Weerasinghe, Pamitha; Gallo, Marcy; Yamada, Richard
Subject: RE: * EPA Racing to Regulate Hearing *

Hey Doug,

I wanted to give you an update on the witnesses for the March 15th hearing. We have confirmed that Christopher Kersting, the President of SEMA will attend, as well as Ralph Sheheen, an NBC racing announcer and amateur racing enthusiast. With regard to an EPA witness at this hearing, we are planning a broader hearing with an EPA witness later this spring where this issue area will be a topic. We are still working to coordinate with EPA on a witness and date for that hearing.

Please let us know when you can who you might be inviting as a witness next week.

Thanks,
Joe

From: Callen, Ashley
Sent: Friday, March 04, 2016 6:44 PM
To: Pasternak, Doug
Cc: Marin, Mark; Brazauskas, Joseph; Colliati, Drew; Weerasinghe, Pamitha; Gallo, Marcy
Subject: Re: * EPA Racing to Regulate Hearing *

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Thanks very much.

Enjoy the weekend.

71

Best,

Doug

1974 REGULATION DEFINING MOTOR VEHICLE

RULES AND REGULATIONS

32609

WISCONSIN					
Source	Location	Regulations Enacted	Date adopted	Date enacted	Final date
WASHINGTON COUNTY					
Brown Mfg. Co., Inc.	Hartford	NR1613(3)(b), Arc.	5/1/63	Jan. 1, 1973	
Craftsman Outboard Corp.	West Bend	do	5/1/63	July 1, 1973	
Gehl Co.	West Bend	do	5/1/63	July 1, 1973	
Kesters Mfg. Corp.	West Bend	do	5/1/63	July 1, 1973	
International Tractor Engg. Co., Inc.	Hartford	do	5/1/63	July 1, 1973	
Royal Ware, Inc.	Hartford	do	5/1/63	July 1, 1973	
West Bend Co.	West Bend	do	5/1/63	July 1, 1973	
WATERTOWN COUNTY					
Aerocable, Inc.	Watertown	NR1613(3)(b), Arc.	4/1/63	July 1, 1973	
Aeros Corp.	Watertown	do	4/1/63	July 1, 1973	
El-Air Corp.	Watertown	do	4/1/63	July 1, 1973	
Oven Systems, Inc.	Watertown	do	4/1/63	July 1, 1973	
Weintraub-Davidson Engineering Co.	Watertown	do	4/1/63	July 1, 1973	
WOOD COUNTY					
Nekoosa Edwards Paper Co., Inc.	Pt. Edwards	NR1613(3)(b), Arc.	5/1/63	Sept. 1, 1973	
POCATELLO COUNTY					
M&O Elevators Inc. (c) Units 13-17	Separately	NR1613(3)(b), Sept.			

(e) The compliance schedule for the source category identified below is disapproved as not meeting the requirements of § 51.15 of this chapter. All regulations cited are air pollution control regulations of the State, unless otherwise noted.

Source	Location	Regulations Enacted	Date adopted	Date enacted
M&O Elevators Inc. (c) Units 13-17	Separately	NR1613(3)(b), Sept.		

[PR Doc. 74-20584 Filed 8-9-74; 9:45 am]

[338-3]

PART 25—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES

Exclusion and Exemption of Motor Vehicles and Motor Vehicle Engines

On March 21, 1973, a notice of proposed rulemaking was published in the Federal Register (38 FR 10601), setting forth the Environmental Protection Agency's proposed regulations under the Clean Air Act with respect to exclusion and exemption of motor vehicles and motor vehicle engines. Pursuant to that notice, which established a sixty day public comment period, several motor vehicles and motor vehicle engine manufacturers submitted comments on the proposed regulations. The regulations, as modified by the Agency to reflect the adopted comments, are promulgated below. A summary of the various comments of the commenters received follows:

* Comments with regard to Exclusion.

(1) Several comments were received which requested that EPA adopt lists of the specific vehicles to be excluded from the regulations. In this regard General Motors Corporation, Cummins Engine Company, and J. I. Case Company suggested incorporation of section 4501(a), C of the ERS Regulation, § 51.1603, in the ERS Code and Group Number 352 and 353 of the Standard Industrial Classification Manual respectively. While the proposed lists did not include all vehicles which will be excluded by the criteria stated in § 85.1703 of the regulations, there were vehicles on each list which would not be and, in EPA's judgment,

should not be excluded. Also, future amendments to such lists might include vehicles not meeting exclusion. Some of the excluded items on the lists were machinery type attachments (e.g. shovels, backhoes, etc.) which were excluded from the Act in their own right, might cause confusion when applied to vehicles which would not be excluded. The Agency would take from the feasibility of some of the lists the list, seeing the machinery attachment excluded, and necessarily concluding that the vehicles to which the attachment is affixed is also excluded. In some instances, none of the lists were adopted. However, the Agency is of the opinion that industry needs would be served by inclusion of a list of excluded vehicles, particularly in view of the nature of the vehicle makes determinations as to exclusions difficult. Therefore, the Administrator will proceed, from time to time, to list specific vehicles by generic names, in order to address concerns of industry that specific guidance be available. The inclusion of any vehicle on the list will be preceded by consultation with manufacturers who are concerned about the exclusion of such vehicles. The EPA exclusion list will be appended to the 40 CFR Part 85 and will be published in the ERS Code after a sufficient number of exclusion determinations are made to warrant publication. Prior to publication, the list will be available from the Mobile Source Enforcement Division, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, Room 3220.

Recommendations were also received from the Specialty Equipment Manufacturers Association (SEMA) to exclude vehicles which are primarily intended typically for show or hobby use (e.g., dune buggies) and from Diamond Reo Trucks, Inc., to exclude vehicles which are primarily specialized vehicles which are designed primarily for vocational applications which would cause them to operate almost entirely off-road. The recommendation of SEMA was not accepted because the Agency believed that it should rely solely upon the intended use by the purchaser rather than the capability of the vehicles. The Agency views a policy of exclusion based upon ownership to be virtually impossible to implement in accordance with the Act because vehicles with on-road, off-road capabilities are typically operated in both situations. The recommendation of Diamond Reo was not accepted because the Agency believed that it is not feasible to regulate a vehicle based on the use it is primarily designed for. In lieu of the "designed primarily for" test, the Agency adopted the "capable of" test, which is consonant with the literal language and the apparent intent of the Act. A vehicle's capability is a more variable, objective standard than its intended use. The capability of a vehicle is dependent upon the manufacturer's subjective determination of the ultimate use to which the vehicle will be put. Nevertheless, the criteria of § 85.1703 would cause the exclusion of some vehicles, because of their inordinate size or the fact that their operation on the highway would be highly unlikely or impracticable, and are primarily designed for off-road use.

(2) A number of comments were received on the 20 mph average speed criterion stated in § 85.1703(c)(1). General Motors Corporation suggested a maximum speed of 35 mph be used. Cummins recommended a 45 mph maximum speed, and J. I. Case recommended that the average speed be increased to 45 mph. A maximum speed criterion had indeed been elected to adopt that approach, average speed criterion, and the Agency has elected to adopt that approach. Since the average speed criterion is explicitly objective and operates to exclude automatically any vehicles which fall within it, the Agency sought to ensure that no vehicles which are truly capable of short distance travel would be excluded on the basis of maximum speed alone. An example would be a small vehicle manufactured for use in an urban environment where fuel economy and economy are more critical than speed. Such a vehicle would obviously not be excluded by the criteria of § 85.1703(c)(1), but would be one excluded by the maximum speed criterion if such limit was set too high, e.g., if such a vehicle could attain a maximum speed of only 30 mph and the maximum speed criterion was set at 35 mph. The Agency determined that any vehicle unable to attain a maximum speed of 25 mph would be excluded. One factor used in this determination was that 25 mph

RULES AND REGULATIONS

is the speed limit prescribed in many "an area. This maximum speed criterion in § 85.1703(b) (1) will operate to exclude a substantial number of off-road vehicles outright. It is felt that application of this criterion in § 85.1703(a) (2) and (3) will exclude vehicles which are not on-road vehicles, but which have maximum speeds in excess of 25 mph.

(3) General Motors proposed additions to the exclusion section which would exclude specifically: (a) firetrucks, because they are used at night, however, requirements demand use, and intermittent operation; (b) vehicles which do not require state licenses, (c) vehicles manufactured solely for construction or mining purposes, and (d) vehicles of an inordinate size, as to exceed state legal limits or require permits for operation. These proposals were not accepted for the following reasons (deferred to correspond to the above proposed additions): (a) GM's proposal considered a special case since no demonstration of an impairment of their mission due to the use of emission control systems have been evidenced to this Agency. We regrettably could not accept this proposal; (b) manufacturers of vehicles which cannot satisfy the firetruck engines at a horsepower rating above that usually required by other engine applications, it is suggested that they present their concern to the Certification and Testing Board. (c) GM's Mobile Source Air Pollution Control Program, 2565 Plymouth Road, Ann Arbor, Michigan 48106. It is possible that these concerns may be resolved in a manner similar to the one proposed by GM.

(d) GM's proposal to exempt heavy-duty rates for military diesel engines. (See 40 CFR 85.874-5 and 85.874-5)

(b) State licensing procedures vary and would not facilitate uniform application. States have areas where state laws do not have a standard for licensing which would operate to exclude a vehicle which would not be excluded by the standards in any other state. If the Agency based its regulation on state laws, it would be forced to either allow one state's law to have nationwide impact or exclude some vehicles only if sold in a particular state. Neither of these options presents a clear-cut federal policy. (c) The fact that vehicles are manufactured for the maintenance and maintenance of roads does not per se lead to the conclusion that such vehicles are not capable of on-road use. Tractors, crawler tractors, vehicles used as a class are not warranted. Of course, such vehicles as earth movers or bulldozers would be excluded by operation of § 85.1703(a) (1), (2), and (3). (d) The Agency concluded that the "ordinateness" criterion to be closely linked with the "highly unlikely" criterion so that in some cases a vehicle's inordinate size might contribute to its use on the road but not necessarily so. Therefore, the dimension fall within state limits. And, as stated in (b) above, application of the different state laws does not lend itself to uniform federal regulation.

(4) As recommended by GM, § 85.1703(a) (2) was changed to read "... such features including, but not being limited

to, a reverse gear (except in the case of motorcycles), a differential or safety features required by state and/or federal law." This section had previously read "... and safety features required by state and/or federal law."

(5) GM commented that the definition of vehicle in § 85.1703(b) is the Clean Air Act definition of motor vehicle in section 214(2). This suggestion was not accepted because the definition of "vehicle" which is used in the term "motor vehicle" which is used in the term "motor vehicle" in § 85.1703(b). Upon further evaluation, the Agency determined that the definition of vehicle constituted a possible source of confusion and therefore, deleted it. Instead, § 85.1703(a) was changed to indicate that a self-propelled vehicle capable of transporting a person or persons or any material, or permanently or temporarily affixed apparatus to a vehicle unless excluded by the listed criteria.

Comments with regard to exemptions. (1) Ford was concerned that EPA does not have statutory authority to grant exemptions for motor vehicles or motor vehicle engines since the exemption provision of the Act refers literally only to new vehicles. In lieu of in-use exemption, Ford submitted a recommendation changing the regulations to indicate that a vehicle or engine by a manufacturer would not be considered tampering even if emissions were increased, if the modification was (1) part of a bona fide good faith effort to remove the vehicle or kept (ii) the vehicle or engine would be labeled as one for test and (iv) the modification was temporary and the vehicle or engine was subsequently placed in certain configurations. This proposal was not accepted for the following reasons:

(a) Interpreting "removing or rendering inoperative" to be inapplicable in cases where modifications cause emissions to increase constitutes no less, if anything, of a violation on the part of the manufacturer. (b) The Agency has the option of either (i) interpreting the Act to include "new vehicles" to include in-use vehicles in the exemption context; (b) While the authority to grant in-use exemptions is reasonably clear, the technical and reasonable construction of the exemption provision would allow in-use exemptions. Under the literal reading of the Act, EPA may grant a new motor vehicle exemption to a manufacturer. Subsequent sales could be performed on the exempted vehicle after sale to an ultimate purchaser (e.g., where an exemption is obtained, the vehicle sold while still in the manufacturer's possession). In such situations subsequently made for purposes of test or otherwise). However, in Ford's view, EPA could not grant an exemption for the same vehicle if the exemption was obtained after sale rather than prior to sale.

Considering that in both cases the purposes justifying the exemption are valid, it appears illogical to grant one and deny the other. Therefore, the in-use exemption has been retained as a practical and consistent means of effect-

ing the intent of the Act. It is emphasized that exemptions for in-use motor vehicles or engines are only necessary in cases where modifications will cause emission standards to be exceeded. Therefore, in the particular case raised by Ford, where the manufacturer obtains competitive market vehicles for certification and test, he would be required to obtain an exemption, or be liable under the tampering provision only if the modifications caused emission standards

(2) Ford's comment regarding § 85.1703(a) (5) recommended specifying that a pre-certification vehicle engine exemption applied to "heavy duty engines" rather than "engine." Ford noted that the latter term could be interpreted to include light duty engines, and since no standards or regulations apply to light duty engines, an illegal omission would result (i.e., that exemptions did not exist for light duty engines). This proposal was accepted. While EPA is studying the need for regulatory efforts in the area of light duty engines, it is considered advisable for classification purposes, to reflect current policy in the Exclusion and Exemption regulations.

(3) Two additional comments by Ford were also accepted. Section 85.1705 (d), (e), and (f) was changed to clarify that the testing exemption program for vehicles or engines, which was appropriate, rather than vehicles and engines in every case, and § 85.1705(c) was changed to allow a vehicle exempt from testing to display it or operated on the road to an exempted entity, e.g., travel from the rail ramp to the cleanup facility to the display area. The exemption for display had prohibited any on-

(4) General Motors submitted a number of comments on § 85.1705, Testing Exemption. In general, GM proposed that requirements for a testing exemption be the same as those for a pre-certification exemption. This proposal was not accepted. The main reason for testing exemption requirements are proposed because the terms of this exemption allow a lease or sale of the vehicles, which would violate a pre-certification requirement may not be sold on the road. For this reason, the Agency believes that requests for testing exemptions where sale or lease is involved should be scrutinized more carefully and require more information. A number of other proposals were also submitted: (i) a proposal to amend § 85.1705(d) to permit manufacturers to determine "reasonableness" of the test or inspection request. EPA believes that this determination must be made by EPA in the discharge of its responsibility to administer the exemption; (ii) a proposal to amend § 85.1705(d) (2) to change it to a minimum instead of an absolute number of vehicles was accepted; (iii) a proposal to delete § 85.1705(d) (3) (total sales portion) was not accepted since this information is relevant to the determination of the reasonableness of the exemption.

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tion request, particularly when dealing with small volume manufacturers who may request exemptions for an unusually high percentage of their total production line and thus use that exemption to avoid costs associated with the application of a recommendation to delete § 85.1705(e).

(2) (site of the test) was not accepted since all that is required is to identify the site (which may be read as general geographical area). (v) was not possible at the time of the application and this information is required by EPA in its efforts to audit vehicles on exempt status; (v) a proposal to change § 85.1705(e) to add "the time or place of the test" (time and mileage) (comment also submitted by Cummins) was accepted; and (vi) a proposal to delete the § 85.1705(e) requirement to submit Vehicle Identification Numbers and Engine Serial Number with the application was accepted, although the requirement that this information be kept by the manufacturers and made available to the Agency when the need arises is retained.

(5) The proposal to delete § 85.1705(e) (fuel conversion exemption) did not contain a provision to allow vehicles under section 203(e) to receive an exemption for conversion to liquid petroleum gas (LPG) is permitted. Since section 203(e) authorizes exemptions for engines modified to conform to the purpose of fuel conversion only if the standards will not cause the emission standards to be exceeded, and since the Agency interprets the tampering provision (section 203(b)(3)) to mean application only to modifications which cause emissions standards to be exceeded, then an exemption for a fuel conversion which did not exceed standards would be unnecessary. Furthermore, most of the fuel conversion systems for LPG use burn propane or butane which, in most cases, result in very low exhaust emissions of the controlled pollutants. Section 85.1708 has been deleted from the final regulations. However, the manufacturer-dealer contemplating a fuel conversion modification is responsible for assuring himself that the conversion will not result in emissions exceeding the standards applicable to the engine or vehicle being converted.

(6) At the urging of Cummins and Chrysler, § 85.1704(a) was modified to clearly indicate that an export exemption could be applied for, but is governed by operation of the standards conditioned as provided in the regulations.

The regulations promulgated below shall be effective January 1, 1975. All regulations are promulgated under the authority of the Clean Air Act, as amended, sections 203(b) (42 U.S.C. 1861-1871), as changed to 214(2) by Pub. L. 93-319, June 22, 1974, and 201 (42 U.S.C. 1887 g).

Dated: September 4, 1974.

Russell E. Flann,
Administrator.

Subpart R—Exclusion and Exemption of Motor Vehicles and Motor Vehicle Engines
Sec. 85.1701 General applicability.
85.1702 Definitions.

Sec. 85.1703 Application of section 214(2).
85.1704 Who may request an exemption.
85.1705 National security exemption.
85.1706 Export exemption.
85.1707 Testing and exemption requests.

Amendments: Sec. 203(e) (42 U.S.C. 1874-2, 214(2) (formerly 213(2), 42 U.S.C. 1874, as changed to 214(2) by Pub. L. 93-319, June 22, 1974), and 201 (42 U.S.C. 1887 g).

§ 85.1701 General applicability.

(a) The provisions of this subpart re-

garding exemption are applicable to new motor vehicles and motor vehicle engines.

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*his regard, required items of information include:

- (1) An estimate of the program's duration;
- (2) The maximum number of vehicles or engines intended; and
- (3) The fraction of the applicant's total sales represented by the absolute number of (2).

(e) With respect to control, the test program must incorporate procedures concerning the purpose of the test, and be capable of offering EPA monitoring capability. As a minimum, required items of information include:

- (1) The technical nature of the test;
- (2) The site of the test;
- (3) The time or mileage duration of the test;

(f) The ownership arrangement with regard to the vehicles or engines involved in the test;

(g) The intended final disposition of the vehicles or engines;

(h) The manner in which vehicle identification numbers or the engine serial numbers will be identified, recorded, and made available; and

(i) The manner of procedure whereby test results will be recorded.

(f) Paragraph (a) of this section applies irrespective of the engine's or vehicle's source of manufacture.

(g) Vehicles unmodified vehicle or engine is a display vehicle or engine to be used solely for display purposes, will not be operated on the public streets or highways except for that operation incidental to its display, will not be sold, leased, or otherwise disposed of, and will not be sold unless an applicable certificate of conformity has been received, no request for exemption of the vehicle or engine is necessary.

(h) Paragraph (a) of this section does not apply to pre-certification vehicles or pre-certification engines. In such cases a request for exemption is necessary; however, the only information required is a statement of the purpose of the general nature of the fleet activities, the number of vehicles involved, and a demonstration that adequate record keeping procedures for control purposes will be employed.

§ 85.1706. National security exemption. A manufacturer requesting a national security exemption must state the purpose for which the exemption is requested and the request must be endorsed by an agency of the Federal Government charged with responsibility for national defense.

§ 85.1707. Export exemptions.

(a) A new motor vehicle or new motor vehicle engine intended solely for export, and not designed to be used outside of the container and/or the vehicle or engine itself, shall be subject to the provisions of section 203(a) of the Act, unless the importing country has new motor vehicle emission standards which differ from the USEPA standards.

(b) For the purpose of paragraph (a) of this section, a country having no standards, whatsoever, is deemed to be

a country having emission standards which differ from USEPA standards.

(c) EPA shall periodically publish in the *FEDERAL REGISTER* a list of foreign countries which have in force emissions standards identical to USEPA standards and have so notified EPA. New motor vehicles or new motor vehicle engines exported to such countries shall comply with USEPA certification regulations.

(d) It is a condition of any exemption for export under section 203(d)(3) of the Act that such exemption will be void ab initio with respect to a new motor vehicle or new motor vehicle engine intended solely for export where:

- (1) such new vehicle or new motor vehicle engine is sold, or offered for sale, to an ultimate purchaser in the United States for purposes other than export; and

(2) The motor vehicle or motor vehicle engine is sold, or offered for sale, to believe that such vehicle or engine will be sold or offered for sale as described in § 85.1708.

§ 85.1708. Granting of exemptions.

(a) If upon completion of the review of an exemption request, the granting of an exemption is deemed appropriate, a memorandum of exemption will be prepared and sent to the manufacturer requesting the exemption. The memorandum will set forth the basis for the exemption, its scope, and such terms and conditions as are deemed necessary. Such terms and conditions will be such as may be agreed to by the parties to the agreement by the applicant to conduct the exempt activity in the manner described to EPA, create and maintain adequate records accessible to EPA at reasonable cost, and to provide for the exempt engines or vehicles setting forth the nature of the exemption, take appropriate measures to assure that the terms of the exemption are met, and advise EPA of the termination of the activity and the ultimate disposition of the vehicles or engines.

(b) Any exemption granted pursuant to paragraph (a) of this section shall be deemed to cover any subject vehicle or engine only if it can be shown that the specific terms and conditions are satisfied. With a breach of any term or condition shall cause the exemption to be void ab initio with respect to any vehicle or engine. Consequently, the introduction or delivery for transportation or commerce of any subject vehicle other than in strict conformity with all terms and conditions of this exemption shall constitute a violation of section 203(a) of the Clean Air Act. All persons to whom the exemption is granted, and any other person to whom the provisions of section 203 are applicable, liable to suit under sections 204 and 205 of the Act.

§ 85.1709. Submission of exemption requests.

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to:

Director
Mobile Source Enforcement Division
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

[FPL Doc. 74-20764 Filed 9-9-76; 8:45 am]

[FRL 209-7]

PART 85—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES

Low Emission Vehicles

On July 13, 1973 (38 FR 18580) EPA published a notice of proposed rulemaking (NPRM) to provide for the determination of low emission vehicle status for 1975 and later model year light duty vehicles, and for heavy duty vehicles for 1975 and later model years. The Clean Air Act (42 U.S.C. 1657-60) established a process under which the Federal Government will pay premium prices for motor vehicles whose emissions control performance is significantly better than that in effect at the time of their procurement. To be eligible for these premium prices, a motor vehicle must first be classified as a "low emission vehicle" by EPA, and then certified by the Motor Vehicle Emission Vehicle Certification Board as a suitable replacement for some class or model of vehicles that the Federal Government is then purchasing.

The original proposed light duty low emission vehicles had been revised to reflect EPA's current position on the required levels of oxides of nitrogen control. EPA has concluded that the oxides of nitrogen standard specified in the NERB is to the public health detriment than necessary from an air quality standpoint. Therefore, the regulations have been revised to specify that any light vehicle which meets the current statutory standard of nitrogen oxides (0.4 gms/mile) before such a standard becomes effective under section 202 will, subject to the other requirements in enforcement section 212, qualify as a low emission vehicle. This revision has streamlined the hydrocarbon and carbon monoxide standards specified in the NERB with the view of considering a more stringent standard as adequate to quality as a low emission vehicle. EPA has concluded that there is no justification for relaxing those standards. Thus no other changes from the NERB were made regarding light duty low emission vehicles.

One commenter objected to the inclusion of heavy duty vehicles in the regulations. Heavy duty vehicles had been excluded from the section 212 regulations based, in part, on an opinion from EPA's Office of General Counsel that section 212 was not intended by Congress to apply exclusively to light duty vehicles.

Heavy duty vehicle regulations

promulgated under section 206

apply to heavy duty engines, and not

heavy duty vehicles. There are two types

of heavy duty engines being produced

now for use in heavy duty vehicles, heavy

Federal Emission
Requirements
SEMA 2008

United States Environmental Protection
Agency

Speaker Anne K. Wick

Anne Wick is the Vehicle and Engine Enforcement Team Leader for EPA's Air Enforcement Division.

Over her 16 years at EPA, Anne has conducted light duty and heavy duty vehicle emission testing, led the Non-road and Heavy Duty Diesel Certification team, and been extensively involved in monitoring the 10-year implementation of the 1998 Heavy Duty Diesel Consent Decrees.

Anne holds a BS and MS in Mechanical Engineering from The Pennsylvania State University.

Outline

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- EPA Mobile Source Enforcement
 - The Clean Air Act
 - Defeat Devices
 - Tampering (and Memo 1A)
 - Voluntary Aftermarket Parts Certification
 - Other Policies and Guidance
 - Exemptions
 - Inspection Maintenance Programs
 - California's Special Status
 - FAQs
 - Web Links
-

EPA's Air Enforcement Program

- EPA is an Executive Agency that protects the environment.
- EPA is composed of a Washington DC Headquarters Office and 10 Regional offices and employs over 18,000 people.
- EPA is organized into media programs (air, water, etc.) and enforcement.
- EPA Air Enforcement Division includes both stationary and mobile source enforcement.
- EPA Air Enforcement Division works closely with EPA's National Vehicle Fuel and Emissions Laboratory in Ann Arbor, MI.

EPA Mobile Source Enforcement

- Mobile source enforcement includes on-road, off-road (nonroad) and fuels.
 - EPA's Vehicle and Engine Enforcement Team is responsible for nationwide enforcement of the non-fuel related provisions of Title II of the Clean Air Act, including provisions related to certification, importation, and tampering.
-

The Clean Air Act

- The Clean Air Act (CAA) was enacted by Congress in 1970, and amended in 1977 and 1990.
- Title II of the CAA – Mobile Source Provisions
 - On-highway and nonroad vehicles and engines are regulated
 - Today's presentation limited to motor vehicles.
- Title II Section 203 of the CAA contains the following prohibitions (among others) for which EPA may seek injunctive relief (remedy) and a penalty.

CAA Title II Prohibitions: Defeat Devices

- CAA Section 203(a)(3)(B), 42 U.S.C. §7522(a)(3)(B): The following acts and the causing thereof are prohibited –
 - To manufacture or sell, or offer to sell, or install, a part for a motor vehicle, where
 - A principle effect of the part or component is to bypass, defeat, or render inoperative any emission control device, and
 - The person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.

Defeat Devices: Who is Liable and what are the Penalties? (CAA Section 205)

- Maximum penalties for sale or installation of defeat devices are \$32,500 per violation for any person or company.
- Each individual sale or installation of a unit that is a defeat device constitutes a separate violation.
- Individuals, dealers, and manufacturers are liable for:
 - Sale or installation, or
 - **Causing** the sale or installation.
- Claims of “off-road use” or “racing only” do not protect the seller from liability under the CAA.

Defeat Device Example: O2 Simulators

- Device that modifies or replaces the signal from the Rear oxygen sensor to the OBD system.
 - 2007 Enforcement Case – Casper's Electronics
 - \$74,000 civil penalty, and
 - Recall of O2Sims.
-

Defeat Device Example: Advanced Fuel Injection Timing

- Computer software that alters diesel fuel injection timing under conditions not substantially represented by the Federal Test Procedure (FTP) is a defeat device.
- 1998 Enforcement Case - Diesel Engine Consent Decrees with Caterpillar, Cummins, Detroit Diesel, Mack, Volvo, Renault, and International (Navistar)
 - Combined civil penalty of more than \$83 million, and
 - Compliance measures in excess of \$1 billion

Other Examples of Defeat Devices

A component or computer code that:

- Causes enrichment for increased power where the code does not activate fully during the FTP, or
- Senses test conditions and changes fuel injection timing when the vehicle is operating off the test cycle, or
- Interferes with the function of the on-board diagnostic system.

Auxiliary Emission Control Device (AECD)

■ AECD is defined as (See 40 C.F.R.
86.082-2 and 86.094-2):

Any element of design that senses
temperature, vehicle speed, engine
rpm, transmission gear, manifold
vacuum, or any other parameter for
the purpose of activating,
deactivating, or modulating the
operation of any part of the emission
control system.

Defeat Device Regulatory Definition

-
- EPA's regulations (see for example 40 C.F.R. Part 86.004-2) define a Defeat Device as:
 - An AECD that reduces the effectiveness of the emission control system during normal vehicle operation and use.
 - But there are some exceptions. An AECD is not a defeat device if:
 - It is substantially used during the FTP, or
 - It is necessary for engine starting, or warm-up, or protection.

Objective Screening Criteria for Heavy Duty Diesel Engine (HDDDE) Defeat Devices

- EPA Guidance: VPCD 98-13 Heavy Duty Diesel Engines Controlled by Onboard Computers: Guidance on Reporting and Evaluating Auxiliary Emission Control Devices and the Defeat Device Prohibition of the Clean Air Act -- (issued 10/15/98)
- Provides a good summary of past guidance on defeat devices for reference,
 - Outlines what must be included in a description of AECDs in order for EPA to evaluate whether the AECD is a defeat device, and
 - Provides objective screening criteria to be used by EPA to determine whether to further scrutinize certain AECDs as defeat devices.

EPA may deny approval for HDDE AECDs that protect a frail engine

- Advisory Circular 24-3 Implementation of Requirements Prohibiting Defeat Devices for On-Highway Heavy-duty Diesel Engines – (issued 1/19/01)
 - Clarifies that EPA will not approve AECDs for engine protection where the engine design is “frail”
 - “If an AECD is expected to cause an excessive increase in any regulated pollutant, EPA will consider whether design alternatives are available which would make the engine/emission control system less susceptible to the need for an AECD that increases emissions to the extent of the proposed AECD.”

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EPA Policy: Defeat Devices on Light Duty Vehicles (<8500 GVWR)

Advisory Circular 24- Prohibition of Use of Emission Control Devices -- (issued 2/11/72)

Defines defeat devices as elements of design that adversely affect emissions during normal vehicle operation but that do not operate during normal FTP test conditions.

Advisory Circular 24-2 Prohibition of Emission Control Defeat Devices - Optional Objective Criteria -- (issued 12/6/78)

Clarifies that electronic control strategies can be defeat devices. Also, this guidance provides a screening criteria for defeat devices. If NO_x on the highway fuel economy test is less than 1.22 times the FTP NO_x standard for cars or 1.28 times the FTP NO_x standard for light trucks, then EPA will determine that the vehicle does not contain a defeat device.

CAA Title II Prohibitions: Tampering

- CAA Section 203(a)(3)(A), 42 U.S.C. §7522(a)(3)(A): The following acts and the causing thereof are prohibited –
 - For anyone to remove or render inoperative an emission control component on a certified motor vehicle prior to sale or delivery to ultimate purchaser, or
 - For anyone to knowingly remove or render inoperative any emission control component on a certified vehicle or engine after sale and delivery to the ultimate purchaser.

Tampering: Who is Liable and what are the Penalties? (CAA Section 205)

- Maximum penalties for tampering:

- Individual: \$2750 per violation
- Dealer or Manufacturer: \$32,500 per violation
- Each act of tampering on each vehicle is a separate violation.
- Individuals, dealers, and manufacturers are liable for tampering.
- Individuals, dealers, and manufacturers are also liable if they *cause* tampering.

Some examples of Tampering Violations

- The tampering prohibition covers:

- Service adjustments to engines that do not conform with original specifications,
- Installation of parts that are not built to original manufacturer (OEM) specifications, and
- Installation of “add-on” parts that were not part of the original certified design.

Memo 1A (Tampering Enforcement Policy)

- Interim Tampering Enforcement Policy Memorandum 1A- (6/25/74) – (Memo 1A)
 - Memo 1A allows the sale and use of aftermarket parts when an individual or company has a “reasonable basis” to believe their actions do not cause emission problems.
- 

Memo 1A (Continued)

- EPA issues no approvals under Memo 1A.
- Reasonable Basis is defined as:
 - No increase in emissions for equivalent, but non-OEM parts, or
 - Vehicles or Engines still meet the emissions standards when tested on the Federal Test Procedure (FTP) for add-on parts or out-of-spec adjustments.

Memo 1A Requirements

- In order to protect yourself from a charge of tampering if you install non-equivalent aftermarket parts, you should have in your records:
 - Emission test results from tests conducted in accordance with EPA's federal test procedure (FTP) using the correct test cycle showing that essentially similar vehicles meet the standards for the remainder of the vehicles' useful lives using your device or
 - An EPA Aftermarket Parts Certificate issued for the same part and covering the same vehicles on which you install the device.
- Generally, the testing required for a CARB EO is the same as the testing required under Memo 1A because the test procedures are essentially the same.

Voluntary Certification of Aftermarket Parts (40 C.F.R. Part 85.2112-2123)

- Parts for Light duty vehicles and light duty trucks only.
- Parts Manufacturer must be able to demonstrate that:
 - The part maintains the vehicle's emission compliance over the full useful life of the vehicle,
 - The part does not alter the operation of or render inoperative any emission related component on the vehicle other than the one it is replacing (so, it can't be a defeat device), and
 - The part does not alter the functioning of the on-board diagnostic system.
- Certified aftermarket parts must be warranted for the lesser of the remaining performance warranty of the vehicle, or the warranty period of an equivalent OEM part.

EPA Aftermarket Catalytic Converter Policy (AMCC Policy)

- “Sale and Use of Aftermarket Catalytic Converters”, published on August 5, 1986.
- AMCC policy allows the sale and installation of new non-original equipment manufacturer (OEM) design catalytic converters under the following circumstances:
 - The catalytic converters are tested to meet the policy guidelines, and
 - The catalytic converters are installed only in limited circumstances:

AMCC Policy Requirements

You can only install an AMCC meeting the policy requirements if:

- Catalytic converter missing from the vehicle when brought in for repair; or
- State or local inspection program has determined the existing catalytic converter has been lead poisoned, damaged, or otherwise needs replacement; or
- Vehicle meets the age and mileage requirements and a legitimate need for replacement has been established and appropriately documented (e.g., a plugged catalytic converter or un-repairable exhaust leaks).

AMCC Policy Requirements (Cont.)

- Life and mileage limits for installation of AMCCs (unless the converter is missing or a State or local inspection program has determined the existing catalytic converter has been lead poisoned, damaged, or otherwise needs replacement):
 - > 5 years old or > 50,000 miles for pre-1995 vehicles, or
 - > 8 years or >80,000 miles for newer vehicles.

EPA Kit Car Policy (7/8/94)

- The Kit Car Policy describes the circumstances under which body modifications to vehicles will not be considered to be tampering because the vehicle is considered to be rebuilt and not newly manufactured.
- The Kit Car Policy also states that attempts to import disassembled or partially disassembled cars as parts is illegal unless the vehicle is certified.
- Vehicles not meeting the definition of Rebuilt Vehicle instead meet the definition of New Motor Vehicle and must be certified.

What is a Rebuilt Vehicle under the Kit Car Policy?

- Used or rebuilt engine, transmission, differential, Emission controls and settings identical to a certified configuration,
- Added weight \leq 500 pounds more than original certified vehicle,
- All catalytic converters, oxygen sensors, and charcoal canisters are new, original equipment parts,
- Same transmission configuration and vehicle-speed to engine-speed ratio ($\pm 3\%$ in every gear) as originally certified configuration,
- Labeling that includes make, model year, engine family, subfamily, and tune-up specifications of original certified vehicle, and
- Fuel filler neck restrictors and unleaded fuel labels which meet the requirements of 40 CFR 80.24, if applicable.

EPA Engine Switching Policy

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Engine Switching Fact Sheet – (issued 3/13/91)

Tampering to replace the engine in a vehicle (repower) with a non-identical engine.

With this policy, EPA permits non-identical repowers if the resulting vehicle is identical to a certified configuration.

Unless the original vehicle was certified to both a gasoline and diesel configuration, you cannot repower a gasoline vehicle with a diesel engine.

You also may not repower a light duty vehicle with a heavy duty engine.

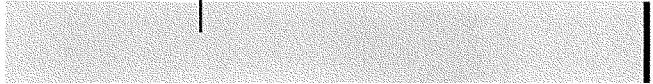
You may repower an older heavy duty vehicle with an engine that is identical to a certified configuration of a heavy-duty engine of the same model year or newer as the year of the installed engine.

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EPA Fact Sheet: Exhaust System Repair Guidelines – (issued 3/13/91)

- Useful information regarding what actions related to work on exhaust systems are violations of the tampering provisions of the Clean Air Act, such as:
 - Removal of catalytic converters and installation of straight pipes on any certified vehicles, or
 - Any action other than the restoration of the exhaust system to the original certified configuration when working on the tampered system.

EPA Exemptions

- The CAA allows EPA, by regulation, to exempt some actions from the prohibitions of the CAA.
 - Some examples are racing exclusions, testing exemptions, or national security exemptions.
 - Each of these exemptions carries the requirement to obtain EPA approval.
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Inspection and Maintenance (I/M) Programs

- There are currently 31 states with active I/M programs
 - Program covers light-duty vehicles and trucks
 - 1996 and new vehicles receive an OBD scan
 - Inspectors check for several things
 - MIL status, Readiness, and Presence of DTCs
 - Issues with any one or more of these can lead to the vehicle being 'failed' and therefore not able to be registered
- Anything that may impact the ability of a program to receive accurate data in any of these areas is of significant concern to I/M program administrators
 - Includes OEM issues and any other modification that may have been made to the vehicle

Inspection and Maintenance Programs

Primary concerns

- Are vehicles being appropriately being modified in accordance with Memo 1-A and/or CARB EO's
- States and both agencies work together to determine if vehicles may have been subject to any form of tampering

Customer satisfaction is also concern

- A customer whose vehicle has been failed must remedy the issue
- To the extent that a vehicle has been inappropriately modified, customers can face considerable expense and inconvenience in order to get their vehicle to pass inspection

California's Special Status

-
- CAA Section 209(b)(1), 42 U.S.C. §7543(b)(1)
 - No State may adopt or enforce any motor vehicle emission standard or require certification unless EPA waives this provision. EPA may approve a waiver only if:
 - The State had adopted standards for the control of vehicle exhaust emissions prior to March 30, 1966, and
 - The state standards are at least as restrictive as the Federal standards.
 - California has been granted numerous waivers for its motor vehicle and nonroad exhaust emission standards, which typically are stricter than Federal standards.

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On-Line References

- General EPA mobile source guidance: www.epa.gov/otaq
- EPA air enforcement guidance:
<http://cfpub.epa.gov/compliance/resources/policies/civil/caa/>
- Electronic Code of Federal Regulations (EPA is Title 40)
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=%2Findex.tpl>
- Fact Sheet: Don't tamper with emission controls
<http://www.epa.gov/compliance/resources/policies/civil/caa/mobile/donttamper.pdf>
- Fact Sheet: Exhaust System Repair Guidelines
<http://www.epa.gov/compliance/resources/policies/civil/caa/mobile/exhsysrepair.pdf>
- Interim Tampering Enforcement Policy (Memo 1A)
<http://www.epa.gov/compliance/resources/policies/civil/caa/mobile/tamper-memo1a.pdf>
- EPA Kit Car Policy <http://www.epa.gov/otaq/imports/kitcar.htm>

On-Line References (Continued)

- VPCD 98-13 Heavy Duty Diesel Engines Controlled by Onboard Computers: Guidance on Reporting and Evaluating Auxiliary Emission Control Devices and the Defeat Device Prohibition of the Clean Air Act
http://www.epa.gov/dis/display_file.jsp?docid=14148&flag=1
- What You Should Know About Using, Installing, or Buying Aftermarket Catalytic Converters
<http://www.epa.gov/otaq/cert/factsheets/catcvtcs.pdf>
- Sale and Use of Aftermarket Catalytic Converters
<http://www.epa.gov/compliance/resources/policies/civil/caa/mobile/amccpolicy.pdf>
- EPA Advisory Circulars
http://www.epa.gov/dis/publist_q1.jsp?guideyear>All%20Years

QS & AS

Q1: Is use of a non-approved aftermarket part tampering or installation of a defeat device?

A: It depends on what the part is. If the part is an “element of design” as defined by EPA (in other words, if it is a basic element of the emission control system, like the catalyst or the EGR), then using it could be tampering (unless the part is certified or otherwise qualifies under Memo 1A). If on the other hand, the part modulates or controls an element of the emission control system, such as altering how the computer controls the fuel, then it would be a defeat device. Also, the device could violate CAA Section 203(a)(3)(B), 42 U.S.C. §7522(a)(3)(B) even if it is not an AECD. An example would be a straight pipe that renders the catalytic converter inoperative because the converter is removed to install the straight pipe. The installer of the straight pipe violates both 203(a)(3)(A), 42 U.S.C. §7522(a)(3)(B) and 203(a)(3)(B), 42 U.S.C. §7522(a)(3)(B).

Qs & As

■ Q2: Am I protected from selling a defeat device or tampering as long as I inform my customers that they can only use my parts “off-road” or “for racing use only” or that the parts are “not for installation on emission-controlled vehicles”?

A: No, if the parts are designed for and intended to be installed on motor vehicles, EPA considers you to still be liable under the CAA prohibited acts.

Qs & As

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- Q3: Are California requirements any different from EPAs? I see a lot of advertisers who note that their parts are “49-state legal” or “not for sale in California”.

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A: As you have probably learned in this presentation, California requires an EO for emission-related parts sold in California. EPA considers parts to be legal if they have an EPA Aftermarket Parts Certificate, or otherwise qualify under Memo 1A. Usually, test data used to obtain a California EO can also qualify as test data supporting a reasonable basis under Memo 1A.

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AMA LETTER ON RACING



March 14, 2016

The Honorable Barry Loudermilk
 Chairman
 Subcommittee on Oversight
 2321 Rayburn House Office Building
 Washington, D.C. 20515

The Honorable Don Beyer
 Ranking Member
 Subcommittee on Oversight
 394 Ford House Office Building
 Washington, D.C. 20515

Dear Chairman Loudermilk and Ranking Member Beyer:

The American Motorcyclist Association applauds the U.S. House Subcommittee on Oversight of the Committee on Science, Space, & Technology for holding the hearing titled, “Racing to Regulate: EPA’s Latest Overreach on Amateur Drivers.”

Founded in 1924, the AMA is the premier advocate of the motorcycling community, representing the interests of millions of on- and off-highway motorcyclists. The AMA sanctions more motorsports competition and motorcycle recreational events than any other organization in America. Our mission is to promote the motorcycle lifestyle and protect the future of motorcycling.

In July 2015, the EPA issued a proposed rule (“Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-duty Engines and Vehicles – Phase 2”) that would make it illegal to convert a motor vehicle into a vehicle for competition-only use if its emission system is modified from stock configuration.

This proposed rule ignores decades of understanding and practice within the amateur and professional racing communities. It also disregards the intent of Congress that vehicles used solely for competition are excluded from the Clean Air Act’s prohibitions against modifying emission systems.

Converting motor vehicles, including motorcycles, into race vehicles that can compete in popular, sanctioned events is an integral part of our American motorsports heritage. The vast majority of motorcycle racing is based on production motorcycles. Under the proposed rule, none of these motorcycles could be modified for racing, even though they would spend their entire useful lives on race tracks.

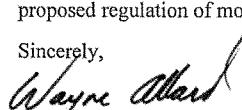
It is important to note that the EPA’s proposed rule was included in an unrelated regulation. The proposed rule will impact every class of motor vehicle and should not have been placed within a

regulation for medium- and heavy-duty engines and vehicles. By shunning transparency and, instead, submerging the related language within one paragraph of a 629-page proposal, the EPA failed to adequately notify affected stakeholders.

With the introduction of the Recognizing the Protection of Motorsports Act of 2016 (H.R. 4715), there is a viable way to address the EPA's overreach into racing. The RPM Act of 2016 would clearly establish that vehicles used solely for competition are exempt from the Clean Air Act definition of motor vehicles, which includes motorcycles.

Again, the AMA thanks the subcommittee for conducting this important hearing on the EPA's proposed regulation of motorsports.

Sincerely,



Wayne Allard
Vice President, Government Relations

DEBUNKING THE MYTH

Debunking the Myths: EPA Proposal to Prohibit Conversion of Vehicles into Racecars**EPA Proposed Regulation:**

Under the EPA proposed regulation, certified motor vehicles and engines and their emission control devices must remain in their certified configuration even if they are used solely for competition. Violators would be subject to the fines and penalties included in the tampering prohibitions.

SEMA's Understanding of Proposal as Confirmed by the EPA:

SEMA representatives met with EPA officials on January 20, 2016 to confirm the association's understanding of the proposed regulation. The EPA officials confirmed that the regulation would make it illegal to convert a certified motor vehicle into a vehicle to be used solely for competition. The EPA officials claimed that this had always been their interpretation of the Clean Air Act.

Myth: This proposal is not changing current law.

Congress never intended the Clean Air Act to be interpreted as giving the EPA the authority to regulate vehicles used solely for competition, regardless of whether the vehicles were once emissions-certified road vehicles. Once a vehicle is taken out of use as a road vehicle and dedicated solely to racing, it is beyond the laws which apply to road vehicles. The EPA and SEMA fundamentally disagree on this point. SEMA has cited the statutory text, legislative history, and congressional intent of the Clean Air Act, as well as 46 years of history whereby vehicles have been converted from certified road status to status as race vehicles without any objection from EPA.

Myth: The EPA is merely clarifying the law as it relates to motor vehicles and nonroad vehicles, and its proposal only affects vehicles driven on the streets.

The EPA is adding new language to the regulations. This new language states that a motor vehicle can never be modified, even if it is used solely for competition and never again used on public roads. The EPA is seeking to prohibit modifications affecting any emissions-related component, such as engines, engine control modules, intakes, exhaust systems, etc.

Myth: The EPA's proposal only affects medium- and heavy-duty vehicles.

The EPA inserted the problematic language into a rulemaking that focuses on medium- and heavy-duty vehicles, however, the rulemaking also includes a section entitled "Miscellaneous EPA Amendments." The language affecting "vehicles used solely for competition" (i.e., racecars) was a "miscellaneous EPA amendment" and would, in fact, affect all light-duty vehicles, not just trucks.

Myth: SEMA is overreacting, this will never get passed.

The EPA has issued a proposed regulation. Regulations are issued by federal agencies and not voted on by elected representatives. If the language becomes final (EPA is expected to issue a final regulation in July), then it will have the force of law and can only be challenged in federal court or overturned by Congress.

Myth: The EPA could not enforce this proposal.

The proposal would give the EPA the power to enforce against any vehicle owner that converts his or her emissions-controlled motor vehicle into a vehicle to be used solely for competition. Whether or not the EPA chooses to enforce, it would be illegal for an individual to convert their motor vehicle. Additionally, the EPA has stated that it will enforce against aftermarket companies that sell parts for use on the converted vehicles, which will limit racers' access to parts.

Myth: The EPA's proposal would not affect vehicles that have already been converted into racecars.

It is the EPA's position that they will be able to enforce against vehicles that have already been converted in the past. While the EPA has indicated that it does not currently plan on enforcing against individuals, it does plan on going after the companies supplying parts for vehicles that have already been converted. So, if you have a racecar that began life as a street car, this regulation would affect your access to parts, and leave you open to enforcement if the agency so chooses.

Fact: The EPA's proposal would not affect racecars with original emissions controls.

The EPA notes that race vehicles with original, unmodified emission controls, including the original engine configuration, engine control module, intake and exhaust components, do not violate the law. The issue is that very few competition race vehicles have been left unmodified and in a certified configuration.

Fact: The EPA's proposal would not affect purpose-built racecars, such as sprint cars, open-wheel dragsters and the cars that currently compete in NASCAR.

The EPA agrees that vehicles that were originally manufactured for racing are excluded from regulation under the Clean Air Act. However, the EPA believes this exclusion extends only to vehicles that were never certified for on-road use or issued a VIN.

Fact: The EPA's proposal will not affect the exemption for "nonroad vehicles," such as dirt bikes, ATVs, snowmobiles and boats used solely for competition.

The EPA has indicated that it will continue to allow "nonroad vehicles" (dirt bikes, ATVs, snowmobiles, boats) to be exempted from certain emissions regulations if they are used solely for competition. Distinct from its stance on motor vehicles, however, the EPA's current position on nonroad vehicles allows emissions-certified nonroad vehicles to be converted into vehicles used solely for competition.

Get the Facts for Yourself:

Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles--Phase 2, 80 Fed. Reg. 40,138 (July 13, 2015), docket no. EPA-HQ-OAR-2014-0827:

Please use the search function to locate this provision within the proposed regulation:

PART 86--CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

Subpart S--General Compliance Provisions for Control of Air Pollution From New and In-Use Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Vehicles

67. Section 86.1854-12 is amended by adding paragraph (b)(5) to read as follows:

§ 86.1854-12 Prohibited acts.

* * * * *

(b) * * *

(5) Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely for competition or if they become nonroad vehicles or engines; anyone modifying a certified motor vehicle or motor vehicle engine for any reason is subject to the tampering and defeat device prohibitions of paragraph (a)(3) of this section and 42 U.S.C. 7522(a)(3).

To review SEMA's comments to the EPA proposal, go to:

<http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2014-0827-1469>

Diesel Aftermarket Parts
Discussion
SEMA 2010

United States Environmental Protection
Agency

EPA Participants: Anne Wick, Jacqueline Robles-Werner

Jacqueline Robles-Werner is the Chief of the Mobile Source Enforcement Branch (MSEB) at EPA, and is an attorney with over 15 years of experience in Clean Air Act mobile source enforcement.

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Anne Wick is the MSEB Vehicle and Engine Enforcement Team Leader. Anne is a Mechanical Engineer with over 18 years of experience at EPA in enforcement and certification.

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The Clean Air Act

- The Clean Air Act (CAA) was enacted by Congress in 1970, and amended in 1977 and 1990.
- Title II of the CAA – Mobile Source Provisions
 - On-highway (motor vehicles and motor vehicle engines) and nonroad (nonroad vehicles and nonroad engines) are regulated.
 - Today's discussion is limited to motor vehicles.
 - Motor Vehicle is "any self-propelled vehicle designed for transporting persons or property on a street or highway."
CAA § 216(2)
- CAA § 203 contains the following prohibitions (among others) for which EPA may seek injunctive relief (remedy) and a penalty.

CAA Title II Prohibitions: Defeat Devices

- CAA § 203(a)(3)(B), 42 U.S.C. §7522(a)(3)(B): The following acts and the causing thereof are prohibited –
 - To manufacture or sell, or offer to sell, or install, a part for a certified motor vehicle, where
 - A principle effect of the part or component is to bypass, defeat, or render inoperative any emission control device, and
 - The person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.

Diesel Defeat Device Example: DPF Delete Kits

■ 2010 EPA Enforcement Case – Acclaim Fleet and Automotive Services

- Acclaim sold four DPF-R kits and installed three of these kits on certified motor vehicles.
 - YouTube video of Acclaim's installation of a DPF-R delete kit was viewed in excess of 40,000 times.
 - The function of the DPF-R kit is to allow the removal of the factory-installed emission control system (the diesel particulate filter - DPF) and defeat the on-board diagnostic monitoring of the DPF.
 - Acclaim paid a penalty of \$3000 for selling four defeat devices and installing three of them, and was required to recall the four trucks.
 - Gear Box Z Inc. of Utah claims it is the manufacturer of the DPF-R delete kit.
 - From the Gear Box Z website: "The DPF-R Kit is designed to be a fully reversible DPF removal for trucks equipped with DPF filters."
-

Defeat Device Example: Advanced Fuel Injection Timing

- Computer software that alters diesel fuel injection timing under conditions not substantially represented by the Federal Test Procedure (FTP) is a defeat device.
- 1998 Enforcement Case - Diesel Engine Consent Decrees with Caterpillar, Cummins, Detroit Diesel, Mack, Volvo, Renault, and International (Navistar)
 - Combined civil penalty of more than \$83 million, and
 - Compliance measures in excess of \$1 billion

Other Examples of Defeat Devices

A component or computer code that:

- Causes enrichment for increased power where the code does not activate fully during the FTP, or
 - Senses test conditions and changes fuel injection timing when the vehicle is operating off the test cycle, or
 - Interferes with the function of the on-board diagnostic system.
-

CAA Title II Prohibitions: Tampering

- CAA Section 203(a)(3)(A), 42 U.S.C. §7522(a)(3)(A): Prohibits the following acts:
 - For anyone to remove or render inoperative an emission control component on a certified motor vehicle or engine prior to sale or delivery to ultimate purchaser, or
 - For anyone to knowingly remove or render inoperative any emission control component on a certified motor vehicle or engine after sale and delivery to the ultimate purchaser.

Off Road Use or Race Only Use

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- Q1: Am I protected from selling a defeat device or tampering as long as I inform my customers that they can only use my parts “off-road” or “for racing use only” or that the parts are “not for installation on emission-controlled vehicles”?
 - A: No, if the parts are designed for and intended to be installed on certified motor vehicles, EPA considers you to still be liable under the CAA prohibited acts.
-
-

EPA Racing Vehicle

Determinations

- Racing vehicle: A vehicle which, in general, has been extensively modified for racing, and is incapable of safe and practical street or highway use because it lacks features associated with safe and practical street or highway use. Such features include, but are not limited to, a reverse gear (except in the case of motorcycles), a differential, or other safety features required by state and/or Federal law.
- Not all vehicles used in races are excluded from emissions compliance.
- Determinations are based on the capability of the vehicle, not its intended use.
- Restrictions: Vehicle may not be registered or licensed for use on or operated on the public roads or highways.
- Reference: <http://www.epa.gov/otaq/imports/420b10027.pdf>
- EPA Contact for Exemptions and Exclusions (Racing and Competition Engines) John LaCroix 734-214-4463.

Application for EPA Racing Exclusion: Required Content

1. Name, address, and daytime telephone number;
 2. Vehicle information (make, model, model year and VIN);
 3. A list of racing features (features that make the vehicle a racing vehicle);
 4. A list of street features that are lacking (features that have been removed or have never been installed that would permit safe driving on streets or highways);
 5. At least four photographs showing the front, rear, and each side view; and if a vehicle with an interior, photographs of the interior;
 6. The name of the sanctioning body and competition class;
 7. A schedule of racing events, including dates and locations where the vehicle will participate;
 8. A copy of the competition racing license; and
 9. Other proof that the vehicle cannot be used on streets and highways, such as a letter from a state's Department of Motor Vehicles (DMV) that explains the vehicle cannot be licensed for use on public roads, and explains why it cannot be licensed.
-

EPA's 1991 Exhaust System Repair Guidelines

- Issued to reflect the change to the tampering prohibitions in the 1990 Clean Air Act Amendments
- Still in Effect

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"Question: Can I remove a converter from a vehicle that is used only for "off-road" driving?

Answer. No. The tampering prohibition discussed in Answer 1 applies to this situation as well. The federal tampering prohibition pertains to "motor vehicles," which are defined by section 216(2) of the Act as "any self-propelled vehicle[s] designed for transporting persons or property on a street or highway." ...It is not legal for anyone to "de-certify" a motor vehicle for "off-road" use.

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Memo 1A (Tampering Enforcement Policy)

- Interim Tampering Enforcement Policy Memorandum 1A- (6/25/74) – (Memo 1A)
 - Memo 1A allows the sale and use of aftermarket parts when an individual or company has a “reasonable basis” to believe their actions do not cause emission problems.
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Memo 1A Requirements

- In order to protect yourself from a charge of tampering if you install non-equivalent aftermarket parts, you should have in your records:
 - Emission test results from tests conducted in accordance with EPA's federal test procedure (FTP) using the correct test cycle showing that essentially similar vehicles meet the standards for the remainder of the vehicles' useful lives using your device or
 - An EPA Aftermarket Parts Certificate issued for the same part and covering the same vehicles on which you install the device.
 - Generally, the testing required for a CARB EO is the same as the testing required under Memo 1A because the test procedures are usually the same.
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Memo 1A (Continued)

- EPA issues no approvals under Memo 1A.
- Reasonable Basis is defined as:
 - No increase in emissions for equivalent, but non-OEM parts, or
 - Vehicles or Engines still meet the emissions standards when tested on the Federal Test Procedure (FTP) for add-on parts or out-of-spec adjustments.

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On-Line References

- General EPA mobile source guidance: www.epa.gov/otaq
 - EPA air enforcement guidance:
<http://cfpub.epa.gov/compliance/resources/policies/civil/caa/>
 - Electronic Code of Federal Regulations (EPA is Title 40)
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=%2Findex.tpl>
 - Fact Sheet: Don't tamper with emission controls
<http://www.epa.gov/compliance/resources/policies/civil/caa/mobile/donttamper.pdf>
 - Fact Sheet: Exhaust System Repair Guidelines
<http://www.epa.gov/compliance/resources/policies/civil/caa/mobile/exhsysrepair.pdf>
 - Interim Tampering Enforcement Policy (Memo 1A)
<http://www.epa.gov/compliance/resources/policies/civil/caa/mobile/tamper-memo1a.pdf>
 - EPA Kit Car Policy <http://www.epa.gov/otaq/imports/kitcar.htm>
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On-Line References (Continued)

- VPCD 98-13 Heavy Duty Diesel Engines Controlled by Onboard Computers: Guidance on Reporting and Evaluating Auxiliary Emission Control Devices and the Defeat Device Prohibition of the Clean Air Act
http://www.epa.gov/dis/display_file.jsp?docid=14148&flag=1
 - What You Should Know About Using, Installing, or Buying Aftermarket Catalytic Converters
<http://www.epa.gov/otaq/cert/factshts/catcvrt.pdf>
 - Sale and Use of Aftermarket Catalytic Converters
<http://www.epa.gov/compliance/resources/policies/civil/caa/mobile/amccpolicy.pdf>
 - EPA Advisory Circulars
http://www.epa.gov/dis/publist_g1.jsp?guideyear>All%20Years
-

SEMA COMMENTS TO EPA

December 28, 2015

Filed: www.regulations.gov

U.S. Environmental Protection Agency (EPA)
Air Docket (MC-28221T)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

National Highway Traffic Safety Administration (NHTSA)
Docket Management Facility (M-30) West Building, Rm. W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Docket: EPA-HQ-OAR-2014-0827; NHTSA-2014-0132
Comments: Proposed Rule: Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles--Phase 2: Vehicles Used Solely in Competition

Dear Sir/Madam:

On July 13, 2015, the U.S. Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA) issued a proposed rule to establish Phase 2 regulations for greenhouse gas (GHG) emissions and fuel consumption for new on-road medium- and heavy-duty vehicles. The EPA included a proposal hidden within the rulemaking to make it illegal for certified motor vehicles to be converted into vehicles used solely for competition. Specifically, the proposed rule ("Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles--Phase 2") would add the following language to 40 C.F.R. Part 86 (40 C.F.R. § 86.1854), a section of the regulations applicable to new and in-use vehicles, including light duty vehicles:

"Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely for competition or if they become nonroad vehicles or engines". 80 Fed. Reg. 40138, 40565 (July 13, 2015).

These comments are limited to that topic. Although the comments are filed after the October 1, 2015 deadline, SEMA contends the change regarding competition use only vehicles is not within the scope of the GHG rulemaking for medium- and heavy-duty vehicles and that the public was not adequately put on notice of its inclusion. The comments will also address the merits of the issue.

The Specialty Equipment Market Association (SEMA) represents the \$36 billion specialty automotive industry. The trade association includes more than 6,800 businesses nationwide that manufacture, distribute, market and retail specialty parts and accessories for motor vehicles. The

Specialty Equipment Market Association (SEMA)
1317 F Street, NW; Suite 500; Washington, DC 20004
Telephone: 202/783-6007; Fax: 202/783-6024



industry employs over one million Americans and produces appearance, performance, comfort, convenience and technology products for passenger and recreational vehicles, including vehicles used solely in competition.

The following addresses whether the EPA provided adequate notice. The comments will then address the EPA's proposed policy change with respect to vehicles used solely for competition.

Administrative Procedure Act

Overview: The Administrative Procedure Act (hereinafter, the "APA") establishes the process by which federal agencies develop and issue regulations. *See* Administrative Procedure Act, 5 U.S.C. § 553 (2015). Among other considerations, the law is intended to provide adequate opportunity for the public, and interested parties in particular, to comment on proposed rules. SEMA contends that the EPA failed to comply with the APA when it proposed changes to the regulations to prohibit conversion of certified motor vehicles to competition use only vehicles. SEMA's analysis below includes factors that courts have considered when evaluating agency compliance with the APA.

Failure to Alert Public of Rulemaking: The table of contents for the 629-page rulemaking does not alert the public that the EPA is proposing a significant policy change on how competition use engines/vehicles are regulated. The table of contents does not include reference to "Competition Use Engines/Vehicles." The topic is covered along with other seemingly minor issues under the heading "XIV. Other Proposed Regulatory Provisions."

Non-Germane: The subject rulemaking will establish the next generation GHG emissions and fuel economy standards for medium- and heavy-duty engines and vehicles. The subject matter referenced in the rulemaking's title and considered within the broader scope of the rulemaking does not logically encompass the modification of a certified vehicle for competition use. Further, this is not the first time the EPA has issued GHG emission standards for medium- and heavy-duty engines/vehicles. Therefore, inclusion of an unrelated topic within a continuing series of rulemakings is unexpected, if not unprecedented.

Rulemaking Does Not Cover Light-Duty Vehicles: By its terms, the rulemaking covers medium- and heavy-duty engines and vehicles. It does not apply to light-duty engines and vehicles, which are regulated under separate EPA rulemakings. Nevertheless, many certified light-duty vehicles may be modified for competition use, and the section of the rules into which the EPA seeks to insert a prohibition against street-to-race vehicle conversions is applicable to light-duty vehicles. The public has not been put on notice that the rule governing medium- and heavy-duty engines/vehicles potentially applies to certified light-duty engines/vehicles.

Change of Policy: Before the Clean Air Act was enacted and since that date, thousands if not millions of certified vehicles have been modified to become vehicles used solely for

competition. Products have been manufactured, sold and installed on these competition vehicles throughout this time. SEMA has been working with the EPA on ways to regulate potential dual-use products, defined as products that could be used on both competition-use only and certified motor vehicles. However, the EPA has never implemented a policy making it illegal for certified vehicles to become competition-use only vehicles. Such a policy would overturn decades of understanding within the regulated community and expose that community to unfair findings of noncompliance and civil penalties.

Arbitrary, Capricious and an Abuse of Discretion: The EPA is seeking to change policy that has been in place for decades and it does not adequately address this change in the summary or explanatory text published in the Federal Register. The only text that could be read as explaining the proposed addition of the language to prohibit street-to-race vehicle conversions are the following paragraphs within the 629-page proposed rule, which do not even reference the part being changed – part 86:

The existing prohibitions and exemptions in 40 CFR part 1068 related to competition engines and vehicles need to be amended to account for differing policies for nonroad and motor vehicle applications. In particular, we generally consider nonroad engines and vehicles to be “used solely for competition” based on usage characteristics. This allows EPA to set up an administrative process to approve competition exemptions, and to create an exemption from the tampering prohibition for products that are modified for competition purposes. There is no comparable allowance for motor vehicles. A motor vehicle qualifies for a competition exclusion based on the physical characteristics of the vehicle, not on its use. Also, if a motor vehicle is covered by a certificate of conformity at any point, there is no exemption from the tampering and defeat-device prohibitions that would allow for converting the engine or vehicle for competition use. There is no prohibition against actual use of certified motor vehicles or motor vehicle engines for competition purposes; however, it is not permissible to remove a motor vehicle or motor vehicle engine from its certified configuration regardless of the purpose for doing so.

EPA is proposing in 40 CFR 1037.601(a)(3) to clarify that the Clean Air Act does not allow any person to disable, remove, or render inoperative (i.e., tamper with) emission controls on a certified motor vehicle for purposes of competition. An existing provision in 40 CFR 1068.235 provides an exemption for nonroad engines converted for competition use. This provision reflects the explicit exclusion of engines used solely for competition from the CAA definition of “nonroad engine”. The proposed amendment clarifies that this part 1068 exemption does not apply for motor vehicles.

See Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles--Phase 2, 80 Fed. Reg. 40138, 40527, 40539 (July 13, 2015).

SEMA contends that to change the policy now, without proper public notice, would be considered arbitrary, capricious and an abuse of discretion under the APA. If the EPA intends to change decades of previously applied policy, SEMA contends such a change must take place within a separate rulemaking. Further, as will be explained below, SEMA contends that existing law establishes a clear policy for vehicles used solely for competition and that only Congress has the authority to make the proposed policy change, not the EPA through a rulemaking.

The EPA's proposed policy change has no basis in the evidence or analysis presented. Under the APA, an agency has an obligation to publish a statement of reasons that will be sufficiently detailed to permit potential judicial review. In this instance, the EPA has placed the burden on the public to provide justification for maintaining decades of previous interpretation of marketplace activities affirming that street vehicles can be modified to create vehicles to be used solely for competition. The EPA notes expanded powers when it states: "This allows EPA to set up an administrative process to approve competition exemptions, and to create an exemption from the tampering prohibition for products that are modified for competition purposes." While threatening in potential scope, this statement is unexplained and fails to meet a conclusion of reasonableness and rationality. For example, the term "administrative process" could be interpreted as authorizing the EPA to establish a database of motor vehicle registrations to confirm that none of the millions of vehicles in the national vehicle fleet have been converted to competition use.

Regulatory Flexibility Act

Reg-Flex Analysis: The proposed rule has the possibility of causing harm to a number of small businesses. Many companies, including small businesses, would be dramatically affected by this new rule. These companies sell hundreds of street vehicles for conversion to race vehicles, undertake the conversions, sell products for use on these vehicles and use the converted race vehicles to participate in the sport of automobile racing. The EPA has failed to conduct an analysis of how these companies would be potentially impacted, as required under the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. §§ 601-612 (2015).

The EPA has actually recognized the important role of these businesses and supported racing in a program titled "Green Racing: From the Raceway to Your Driveway." *See Green Racing: Frequently Asked Questions*, GREEN RACING 2011 PRESS KIT, <http://www3.epa.gov/otaq/ld-hwy/green-racing/PDF/FAQ.pdf>, and Green Racing Fact Sheet, http://www3.epa.gov/otaq/ld-hwy/green-racing/PDF/Quick_Facts.pdf (both attached). Working in collaboration with the American Le Mans Series (ALMS), the Green Racing program promoted innovation in racing that could be transitioned into use

in on-road vehicles. The EPA recognized that this transition would be possible because “[a]ll of the race cars have direct links to production vehicles,” with some cars in the series described as “more production-based but are highly modified for racing.” *See Program Announcement: Green Racing Initiative*, EPA420-F-10-058 (November 2010), <http://www3.epa.gov/otaq/lด-hwy/420f10058.pdf> (attached). Given this understanding on the part of the EPA, it is unclear how and when the current conflicting position was formulated, and the rulemaking materials provide no clarification.

Due Process Considerations

Constitutional due process demands agencies provide adequate notice to regulated individuals. This notice can be made through the informal notice and comment rulemaking process using the Federal Register, or actual notice may be provided directly to interested members of the public. As settled Supreme Court precedent instructs: “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

The EPA has failed to provide actual notice of their proposed changes to the regulated industry despite ample opportunity to do so. SEMA has been in discussions with the EPA for years on the issue of street-to-race vehicle conversions. The discussions have focused on helping the EPA find ways to prevent racing products from finding their way onto street vehicles. In fact, EPA personnel participated in a presentation at an industry trade show sponsored by SEMA on November 5, 2015 to speak to this very issue and made no mention of the pending rulemaking proceeding. It does not seem unreasonable that the EPA should make some effort to communicate to the industry a rulemaking that seeks to regulate street-to-race vehicle conversions in light of this extensive history between the Agency and the regulated entities.

Where the Federal Register is used to provide constructive notice to interested parties, the entry should at least be drafted in a manner reasonably calculated to inform the reader that the agency is attempting to regulate in a particular area. In this instance, the EPA has titled its rulemaking “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles--Phase 2,” and its summary provides insufficient notice that light-duty engines and vehicles, specifically those used solely for competition, are affected by the proposed rule.

EPA Policy on Motor Vehicles Used for Competition

The proposed rule is attempting to bring vehicles used solely for competition within the purview of the Clean Air Act’s definition of “motor vehicles” required to be certified to relevant mobile source emissions standards and remain in their certified configuration. This interpretation of the Clean Air Act’s definition of “motor vehicle” is not in line with the statutory language or legislative history.

In the Motor Vehicle Air Pollution Control Act of 1965, Congress first defined the term "motor vehicle" for the purpose of regulating air pollution as "any self-propelled vehicle designed for transporting persons or property on a street or highway." *See* Motor Vehicle Air Pollution Control Act, Pub. L. No. 89-272, 79 Stat. 992 (1965) at § 208(2). The 1965 Act sought to regulate emissions from new motor vehicles by making it illegal for "any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title prior to its sale and delivery to the ultimate purchaser." *Id.* at § 203(a)(3) (hereinafter, the "anti-tampering provision").

In 1970, Congress passed the Clean Air Amendments of 1970 (hereinafter, the "1970 Clean Air Act"). Clean Air Act, Pub. L. No. 91-604, 84 Stat. 1676 (1970). The 1970 Clean Air Act created an unprecedented scheme for regulating both stationary and mobile sources of air pollution. The 1970 Clean Air Act did not disturb the definition of "motor vehicle" put in place in 1965 (nor did any other subsequent amendments to the law), but lawmakers did add language to regulate vehicles after first retail sale. The lawmakers expanded the anti-tampering provision to add that no person could render the emissions controls inoperative "after such sale and delivery to the ultimate purchaser." *Id.* at § 7(a)(3). Despite this intent to regulate some vehicles after first retail sale, Congress did not intend the 1970 Clean Air Act to extend the purview of the law to cover vehicles manufactured or modified for racing. The following clarification on this point was made during the House consideration of the congressional conference committee report on the Clean Air Act as signed into law by President Nixon (H.R. 17255):

MR. NICHOLS. I would like to ask a question of the chairman, if I may.

I am sure the distinguished chairman would recognize and agree with me, I hope, that many automobile improvements in the efficiency and safety of motor vehicles have resulted from experience gained in operating motor vehicles under demanding circumstances such as those circumstances encountered in motor racing. I refer to the tracks at Talladega in my own State, to Daytona and Indianapolis, competition.

I would ask the distinguished chairman if I am correct in stating that the terms "vehicle" and "vehicle engine" as used in the act do not include vehicles or vehicle engines manufactured for, modified for or utilized in organized motorized racing events which, of course, are held very infrequently but which utilize all types of vehicles and vehicle engines?

MR. STAGGERS. In response to the gentleman from Alabama, I would say to the gentleman they would not come under the provisions of this act, because the act deals only with automobiles used on our roads in everyday use. The act would not cover the types of racing vehicles to which the gentleman referred, and present law does not cover them either.

House Consideration of the Report of the Conference Committee, Dec. 18, 1970 (reprinted in *A legislative history of the Clean air amendments of 1970, together with a section-by-section index*, U.S. LIBRARY OF CONGRESS, ENVIRONMENTAL POLICY DIVISION, Washington: U.S. Govt. Print. Off. Serial No. 93-18, 1974, p. 117).

Neither the 1977 nor the 1990 revisions to the Clean Air Act altered this definition of “motor vehicle” as commented upon by Representatives Nichols and Staggers. See Clean Air Act Amendments of 1977, Pub. L. No. 95-95, 91 Stat. 685 (1977); see also Clean Air Act Amendments, Pub. L. No. 101-549, 104 Stat. 2399 (1990).

While it is clear from the legislative history that the Clean Air Act was not intended to regulate race vehicles, that fact should have become even clearer as a result of the 1990 amendments to the Act. The amendments were made to provide EPA with authority to regulate non-road vehicles and the engines used therein. See 42 U.S.C. § 7550(10)-(11) (2015). Since the term “nonroad vehicle” could easily have been interpreted to include race vehicles, Congress used language to unequivocally exclude vehicles used solely for competition from the definition of “nonroad vehicle.” See *id.* (“The term ‘nonroad vehicle’ means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.”).

The fact that Congress separated out “vehicles used solely for competition” from “motor vehicles” in the definition of “nonroad vehicle” is also instructive, as it indicates the term “motor vehicle” was not understood as covering a “vehicle used solely for competition.” See 42 U.S.C. § 7550(10) (2015) (defining a nonroad motor vehicle as “not a motor vehicle *or* a vehicle used solely for competition”) (emphasis added). It is also noteworthy that Congress referenced racecars as vehicles *used* solely for competition – not vehicles built solely for competition.

Based on the statutory text and the legislative history, it is clear that vehicles used solely for competition, including a race vehicle that has been created by converting a certified vehicle to a racecar, are not within the purview of the Clean Air Act. Administrative rulemaking is not a process by which an agency is permitted to circumvent Congress, however, it appears that the EPA is attempting to alter current law as it relates to vehicles used solely for competition. The EPA’s proposal would alter current law by adding the following provision to the regulations: “Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely for competition or if they become nonroad vehicles or engines.” See Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles--Phase 2, 80 Fed. Reg. 40138, 40565 (July 13, 2015). This new language is in conflict with the statutory text and legislative history and should not be inserted into the regulations unless Congress indicates an intent for such a rule to be put in place.

Other Implications and Considerations

The proposed rule would create new law without adequate notice to the regulated parties, most importantly the motorsports industry, and upset decades of industry practice. The National Association for Stock Car Auto Racing (NASCAR) was founded in 1948 on the premise that ordinary street cars could be converted into racing machines. Conversely, participants in demolition derbies seek to destroy other former street vehicles that have been modified for potential destruction. In between these two extremes are a myriad of other types of racing events, with participants that range from professionals to novices using vehicles that have been modified for racing use. If the EPA intends to continue its push for a policy prohibiting conversion of street vehicles to vehicles to be used solely for competition, it must put the motorsports industry on proper notice and explain its rationale, including the statutory authority for such a prohibition.

At least one other regulatory hurdle must be addressed if the EPA continues to pursue this new policy. Motor vehicles are regulated by both the EPA and NHTSA. Similar to the Clean Air Act's tampering prohibition, under the Motor Vehicle Safety Act it is illegal for a manufacturer, distributor, dealer, or motor vehicle repair business to knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard. *See* 49 U.S.C. § 30122(b) (2015). The Motor Vehicle Safety Act's "make inoperative" prohibition does not apply to a certified motor vehicle that has been modified into a vehicle used solely for competition, placing it in conflict with the EPA's proposed interpretation of the Clean Air Act's tampering prohibition. The EPA must explain how its proposed application of the Clean Air Act would harmonize with NHTSA's application of the Motor Vehicle Safety Act.

Beyond statutory differences, the issue has significant economic and safety implications. Competition use vehicles are modified in shops across the nation and the vehicles are outfitted with safety equipment such as five-point seat belts, roll bars, cages and safety netting. These sales and services would cease as a result of the EPA's proposed policy. The EPA's unilateral action would threaten auto sector jobs and stifle the production of new and innovative safety equipment due to decreased product sales. Since many of the companies associated with these products and services are small businesses, the EPA's Regulatory Flexibility Act analysis must take this issue into consideration.

Conclusion

Based on the foregoing, SEMA objects to the inclusion of language relating to vehicles used solely for competition in this greenhouse gas rulemaking and requests that it be removed. Among other problematic rhetoric unnecessarily included in the proposal, the following new language regulating all vehicles, including light-duty vehicles, is especially out of place in a rulemaking for greenhouse gas standards covering medium-

and heavy-duty vehicles. The language is also out of sync with governing law. Therefore, we specifically request the EPA remove the following proposed language:

67. Section 86.1854-12 is amended by adding paragraph (b)(5) to read as follows:

§ 86.1854-12
Prohibited acts.

* * * * *

(b) * * *

(5) Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely for competition or if they become nonroad vehicles or engines; anyone modifying a certified motor vehicle or motor vehicle engine for any reason is subject to the tampering and defeat device prohibitions of paragraph (a)(3) of this section and 42 U.S.C. 7522(a)(3).

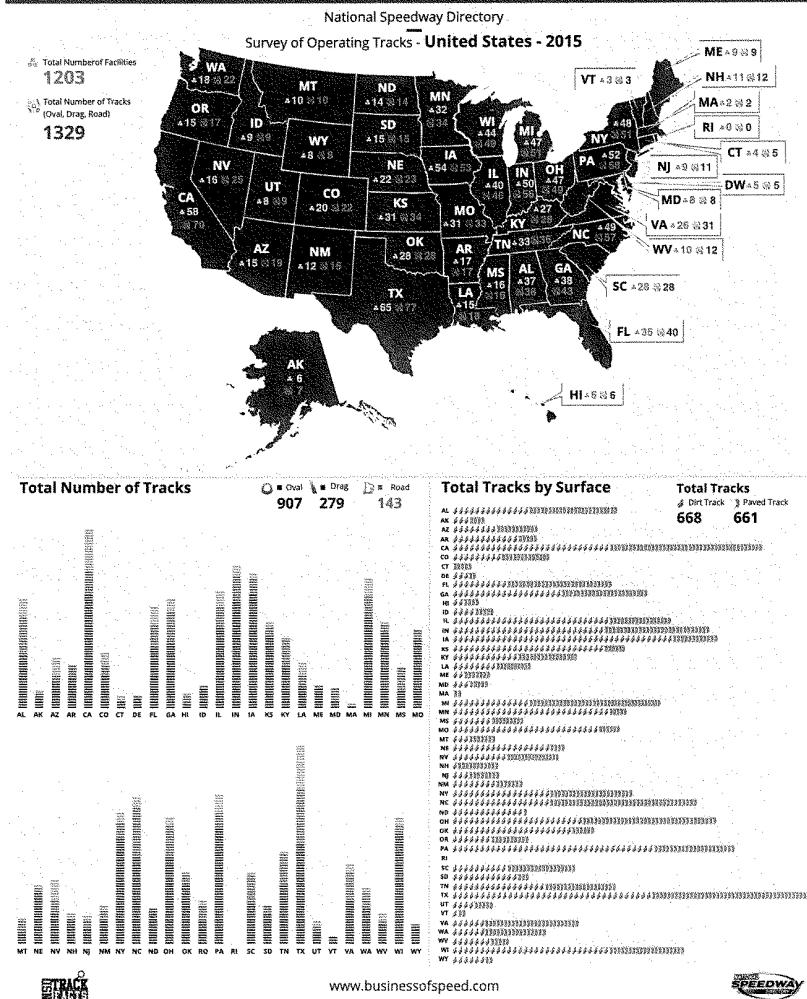
Thank you for this opportunity to submit these comments. If you have any questions, please feel free to contact me at 202/783-0864 or by e-mail at stevem@sema.org.

Sincerely,



Stephen B. McDonald
Vice President, Government Affairs

NSD 2015 EDITION TRACK SURVEY INFOGRAPHICS

THE BUSINESS OF SPEED

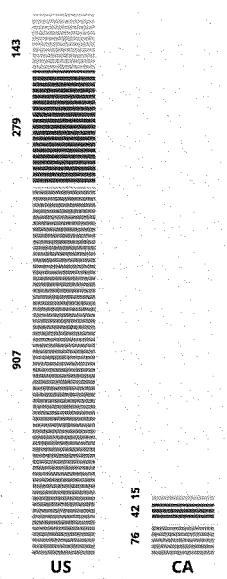
THE BUSINESS OF SPEED

National Speedway Directory

Survey of Operating Tracks - United States and Canada - 2015

Total Number of Tracks

O Oval Drag Road
983 321 158

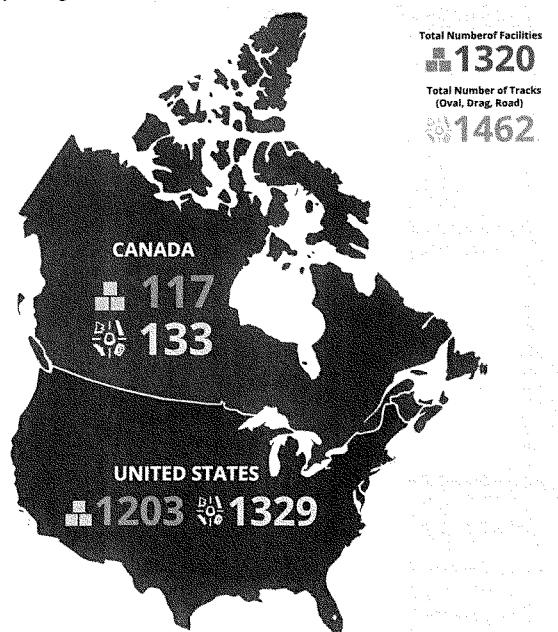


Total Number of Facilities

1320

Total Number of Tracks
(Oval, Drag, Road)

1462



Total Tracks by Surface

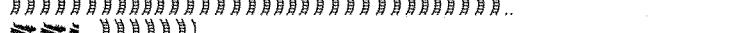
Total Dirt Track Total Paved Track
704 **758**

* One count = 15 units

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TELL THE EPA TO WITHDRAW ITS PROPOSAL TO PROHIBIT THE CONVERSION OF VEHICLES INTO RACECARS

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the WHITE HOUSE PRESIDENT BARACK OBAMA

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WE PETITION THE OBAMA ADMINISTRATION TO:

Tell the EPA to Withdraw Its Proposal to Prohibit the Conversion of Vehicles Into Racecars

The American love affair with automobiles includes watching and participating in motorsports. For decades Americans have converted their street vehicles into racecars, from pre-World War II classics to modern era performance cars. It has brought joy and jobs to millions. However, the U.S. Environmental Protection Agency has issued a proposed rule that would do away with this time honored tradition. It would outlaw the conversion of any type of emissions-certified vehicle into a racecar, and make it illegal to sell any emissions-related parts for those cars. The Clean Air Act prohibits the EPA from regulating racecars. Tell EPA Administrator Gina McCarthy to remove this provision from the "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- & Heavy-Duty Engines-Phase 2" rule.

Published Date: Feb 09, 2016
Issues: Economy, Environment, Transportation and Infrastructure

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SIGNATURES NEEDED BY MARCH 10, 2016 TO REACH GOAL OF 100,000	0	167,415
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CREATOR E. S. Alexandria, VA February 09, 2016 Signature # 1	G. N. Niles, IL March 11, 2016 Signature # 167,415	G. S. Winston Salem, NC March 11, 2016 Signature # 167,414	J. W. Tualatin, OR March 11, 2016 Signature # 167,413
M. D. North Las Vegas, NV March 11, 2016 Signature # 167,412	C. W. Deming, NM March 11, 2016 Signature # 167,411	V. D. Copiague, NY March 11, 2016 Signature # 167,410	H. S. Milton, WI March 11, 2016 Signature # 167,409

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Mooresboro, NC
March 11, 2016
Signature # 167,408

D. H.
March 11, 2016
Signature # 167,407

P. S.
Fairmont, WV
March 11, 2016
Signature # 167,406

J. S.
Alexander, AR
March 11, 2016
Signature # 167,405

O. B.
Canton, GA
March 11, 2016
Signature # 167,404

P. M.
Rochester, NY
March 11, 2016
Signature # 167,403

D. M.
Scotts, MI
March 11, 2016
Signature # 167,402

T. K.
Lockport, IL
March 11, 2016
Signature # 167,401

J. A.
Hammond, LA
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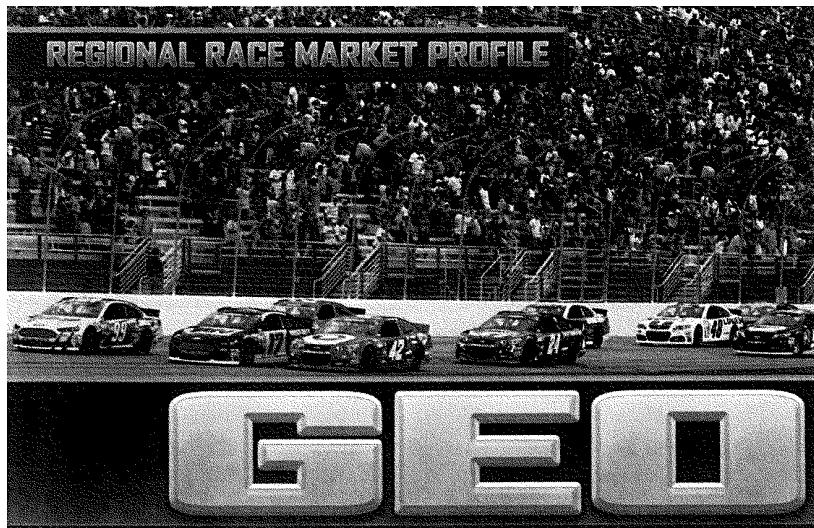
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ALTHOUGH

the National Association for Stock Car Auto Racing (NASCAR) Hall of Fame resides in the city of Charlotte, North Carolina, there are many Georgians who believe its rightful home is in Georgia, where hot shoe drivers who "tripped" moonshine during the Prohibition era gave birth to stock car racing and eventually NASCAR.

One of them is J. Marvin Miller of Columbus, Georgia, president of the Georgia Automobile Racing Hall of Fame Association (GARHFA), which has 500 members throughout the state. A drag racer in these parts back in the 1960s (winning 22 races in a row in 1962), and an owner of Winston Cup and Grand National cars up through the mid-1970s (using them to advertise the heating and air conditioning business he still runs), he was inducted into the GARHFA, whose museum is located inside Dawsonville City Hall, in 2006. Not surprisingly, one of its many featured exhibits is a working still that today turns out legal moonshine.

"Lightning" Lloyd Seay, who learned to drive running moonshine on north Georgia's tricky backroads before winning his first stock car race at Lakewood Speedway, now defunct, in 1938, when he was just 18 years old. Seay had a short but stellar stock car career, including a win at Daytona Beach in 1941, before he was shot and killed by a cousin over a moonshine business conflict at the age of 21. NASCAR founder Bill France Sr. once described Seay as "the best pure race driver I ever saw."

Not surprisingly, Seay was one of the first drivers inducted into the Georgia Racing Hall of Fame (GRHOF) in Dawsonville when it began honoring local legends in 2002. Others in the inaugural group included Seay's cousins Raymond Parks and Roy Hall, and two-time NASCAR champion Tim Flock (of the famous Flock brothers), whiskey runners all.

Bill Elliott, better known around these parts as "Awesome Bill From Dawsonville" and "Million Dollar Bill," was also among the GRHOF's first honorees. While the 1988 NASCAR Cup champion never ran moonshine, he learned to drive on the same backroads as those who did, and parlayed that skill into a racing career that included 44 NASCAR Cup victories, two Daytona 500 wins, and the highest speed ever achieved

at a NASCAR event, 212.809 mph, set at Talladega in 1987.

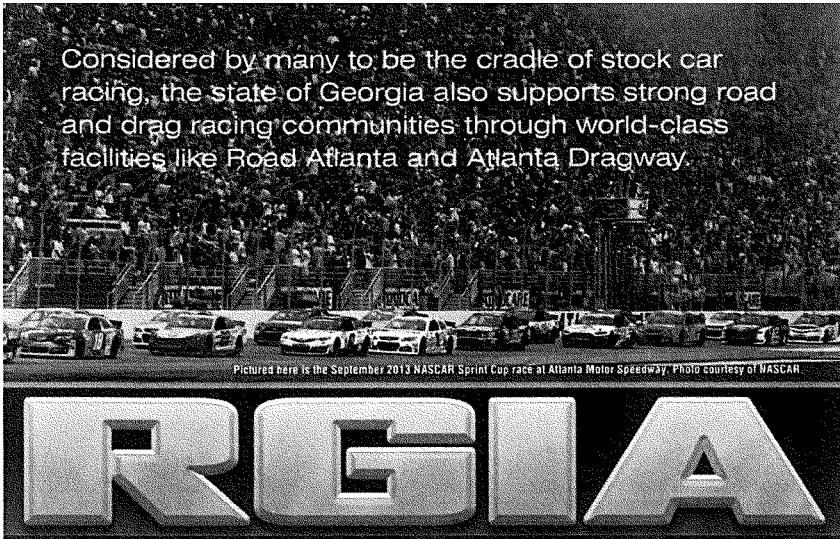
Now, "Awesome" Bill's son Chase Elliott is doing Dawsonville proud. As this was written over Labor Day weekend, the younger Elliott, driving for Hendrick Motorsports, became the youngest driver, at age 17, to win a NASCAR Camping World Truck Series event, the Chevrolet Silverado 250 at Canadian Tire Motorsport Park. In June, Elliott became the youngest superspeedway winner in history with an ARCA Racing Series win at Pocono.

Big Dollar Racing Market

These days, racing in Georgia operates on the right side of the law, bringing in huge tourism revenue and contributing significantly to the state economy. And although there is an annual Moonshine Festival (with parade and car show) at the Hall of Fame in Dawsonville, where the street names were recently changed to honor Seay and other stock car racing pioneers, Georgia also boasts a huge, and growing, modern NASCAR component, as well as sizable and sophisticated drag and road racing communities.

Considering the area's long history in racing, franchises such as NASCAR,

Performance Racing Industry | November 2013



NHRA (National Hot Rod Association), ALMS (America Le Mans Series) and SCCA (Sports Car Club of America) thrive here. With more than half of the state's population located in the Atlanta metropolitan area in the northwestern part of the state, that's also where the majority

Dixie 200 won by Fireball Roberts, until it was purchased by Bruton Smith in 1990 and transformed into one of the country's premier motorsports facilities. Today, AMS is one of eight Speedway Motorsports-owned facilities operating in major marketplaces.

"There was a need for a country club here. People want access to courses where they can get on the track anytime they want to, at a moment's notice."

of Georgia's racing takes place, at world-renowned facilities such as Atlanta Motor Speedway (AMS) in Hampton, Road Atlanta in Braselton, and Atlanta Dragway in Commerce.

Racing is a huge economic driver for the area, with the *Atlanta Journal-Constitution* reporting nearly a decade ago that Atlanta Motor Speedway alone contributed more than \$455 million annually to the local economy, more than the combined total of all other sporting events in the city.

AMS, formerly known as Atlanta International Raceway, had a rocky history from the time it opened in 1960 with the

The biggest event at AMS annually is the Labor Day NASCAR Sprint Cup race, the AdvoCare 500, run under the lights here since 2009, when the event moved from an October date. Dubbed "the biggest Labor Day party in the USA," by AMS president and general manager Ed Clark, the three-day event featured sprint cars (the United Sprint Car Series) on the 1.54-mile asphalt quad-oval for the first time this year. Saturday night saw 300 miles of racing from the NASCAR Nationwide Series, topped off by the Sprint Cup 500-miler on Sunday night. Attendance generally tops 90,000 fans

By Virginia DeMoss

NASCAR's role in the state of Georgia is bound to become more interesting in the future, owing to the purchase of Road Atlanta as part of a 2012 deal in which NASCAR Holdings, which had owned the GRAND-AM Series since 2008, acquired Panzoz Motorsports Group, owner of the Braselton-based American Le Mans Series (ALMS). The package also included acquisition of the International Motor Sports Association (IMSA), which sanctions ALMS as well as GT3 Cup Challenge by Yokohama, the Cooper Tires Prototype Lites Championship and the Porsche GT3 Cup Challenge Canada by Michelin, as well as the lease on Sebring International Raceway in Florida.

After maintaining separate schedules in 2013, the American Le Mans Series presented by Tequila Patrón and the GRAND-AM Rolex Sports Car Series—the two biggest series in American sports car racing—will merge into United SportsCar Racing, with new racing class designations, in 2014. When we spoke with Road Atlanta track president Geoff Lee in late August, he said the track would already

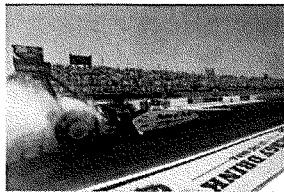
REGIONAL RACE MARKET PROFILE GEORGIA

be seeing positive impact from the merger at its biggest annual event, the Petit Le Mans powered by Mazda weekend.

"On Friday of this year's Petit we're going to host the K&N Pro Series, so we'll have all of the up-and-coming drivers from NASCAR here running on the road course," said Lee.

Recovery & Rain-Outs

Although many contacts told us that Georgia racing is slowly rebounding



from the recent recession, the sport took another hit this summer in the form of almost non-stop rain. Indeed, Atlanta's rainfall for the first half of 2013 had already surpassed the total for all of 2012, and the rain just kept coming.

"It's rained nearly every weekend this year, and we've got race tracks that have only gotten in a few races so far," said Kirk Barnett of racing retailer Barnett Performance and its wholesale business BCI Performance, which covers a full city block in downtown Atlanta, and

Racing in Georgia brings in huge tourism revenue and contributes significantly to the state economy. Indeed, Georgia boasts a huge, and growing, modern NASCAR component, as well as sizable and sophisticated drag and road racing communities. In a state with nearly 40 race tracks, a variety of racing businesses cater to racers throughout Georgia and nationwide. Photo courtesy of Atlanta Dragway.

is packed with 100,000-square-feet of performance inventory.

"There has been no way for some of them to get any races off, so most of those are just lost when you look at the bracket racing or the Saturday night round track racing. The reality is that they're just not replacing parts," added Glenn Barnett, who runs the store their drag racing dad started in 1971 with his brother Kirk. Without the weather issues, "We've started to see gradual improvement," Glenn told us. "It's nowhere close to where it was, but it's gradually coming back."

While the focus of the business has always been drag racing, the Barnetts estimate sales are probably split 50/50 between drag and circle track participants. The tracks closest to them whose racers they serve are Atlanta Dragway; Silver Dollar Raceway, a modern, NHRA-sanctioned quarter-mile located in Reynolds, about 90 miles south of Atlanta;

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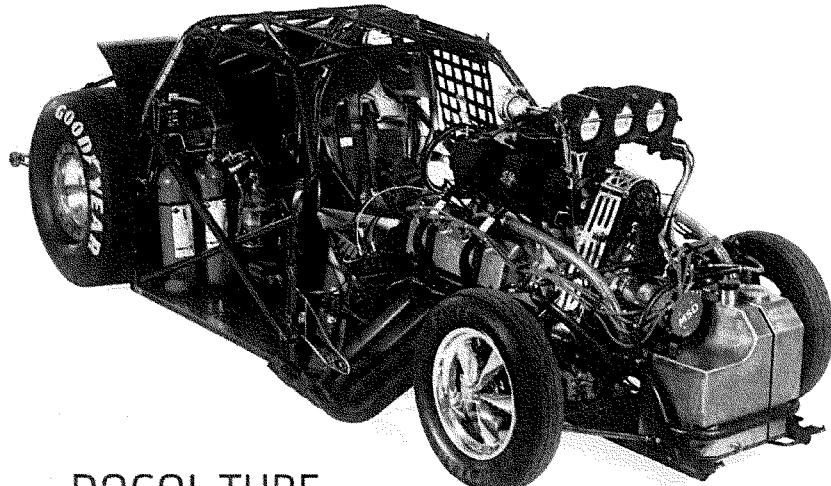
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and Rome and Dixie speedways, circle tracks located in Rome and Woodstock, respectively. Rome dubs itself the "World's Fastest 1/2 Mile Clay Track" and both facilities specialize in late models. In all, the state has about a dozen drag strips and close to 25 asphalt and dirt oval tracks.

In tough economic times, the brothers praised the low-cost, fun series that are keeping local racers busy, such as the ChumpCar World Series, which runs at both Road Atlanta and Atlanta Motorsports Park (AMP), a brand-new road racing country club in Dawsonville, as well as the "Friday Night Drags" at Atlanta Motor Speedway, where the racing is conducted on an eighth-mile stretch of pit road and there are no lights or timing tools used.

"It's back to an older time of racing," said Glenn Barnett. "They use a flagger and someone at the finish to judge who

wins or loses, and they don't keep any times. In drag racing, if you're more than a tenth off the other guy, you really have no chance of winning. Without any times, you don't know you're that much slower, so you keep thinking you're going to win. It keeps it a little more interesting."

Julius Hughes of Atlanta Speed Shop in Gainesville agreed that business has been down at his engine-building shop that specializes in drag racing, marine and street performance applications—attributing it to the economy, the cost of fuel and the weather. "At least the lake is full," he quipped about the constant rain that has supplanted the local drought of just a few years ago. With less activity all around, there are fewer sales. "What people are doing now is running what they've got and patching it up; they're not really building a lot of new motors."

In response to the decline in business, Hughes has decided to be proactive and

try to broaden the market by promoting a new nostalgia program called the Fuel & Gas Series. The first thing he did, last October, was revive the Atlanta \$10,000 event that used to run at his father's drag strip, the Atlanta Speed Shop Dragway, back in the 1960s and early 1970s. It was the first big Top Fuel and Super Stock event in the Southeast, but was eventually overshadowed by the NHRA Gatornationals. The Dragway closed in 1992.

Last year's event at Atlanta Dragway was a big hit, and it repeated this October. For 2014, Hughes plans to add three or four smaller events within a 100-mile radius of that track to keep travel and expenses low. The series doesn't allow electronics, either. "It's a simpler way of racing and a simpler type of car, and hopefully that will appeal to people in these times," he said.

Celebrating its 10th season in 2013, the FASTRAK Racing Series in Carnesville,

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SCOTT-LAMALFA EPA REG LETTER

Congress of the United States
Washington, DC 20515

February 29, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: EPA Policy on Regulating Street Cars Modified to Become Racecars

Dear Administrator McCarthy:

Thank you for your testimony of February 11, 2016 before the House Committee on Agriculture regarding the impact of actions taken by the Environmental Protection Agency (EPA) on the rural economy. This letter revisits an issue we raised at the hearing, as we are concerned that the EPA is advancing a rulemaking that would make it illegal to modify a certified street vehicle into a racecar.

As you noted at the hearing, the Clean Air Act excludes from EPA regulation vehicles that are used solely for competition (aka “racecars”). The longstanding definition of “motor vehicle” only applies to a “self-propelled vehicle designed for transporting persons or property on a street or highway.” When Congress amended the law in 1990 to provide authority to the EPA to regulate nonroad vehicles, it specifically excluded “vehicles used solely for competition” from the definition of “nonroad vehicle”¹ in order to affirm the exclusion.

At issue is a proposal contained in the greenhouse gas regulations² to “clarify” that the EPA deems any entity or individual who modifies a vehicle to become a racecar to have engaged in an act of tampering if the vehicle is no longer emissions-compliant as originally certified. For example, if finalized, the proposal would apply to a street vehicle that has been taken off the streets, unregistered by the owner and state authorities, converted into a racecar by modifying the intake, exhaust system and tune, and trailered to the track. The individual or shop that performed the modifications would have engaged in tampering and be subject to civil penalties. If sold, the new owner would also be exposed to civil penalties, since the vehicle would still have a VIN demonstrating that it was once a certified vehicle that has been converted.

¹ See 42 U.S.C. § 7550(10)-(11) (2015).

² Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, 80 Fed. Reg. 40,138 (July 13, 2015), docket no. EPA-HQ-OAR-2014-0827.

The Honorable Gina McCarthy
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The “clarification” language would be contained in the compliance prohibitions for light-duty vehicles and trucks, and heavy duty vehicles. The text is found at page 429 of the proposed greenhouse gas rule, as follows:

Subpart S--General Compliance Provisions for Control of Air Pollution From New and In-Use Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Vehicles

67. Section 86.1854-12 is amended by adding paragraph (b)(5) to read as follows:

§ 86.1854-12 Prohibited acts.

* * * * *

(b) * * *

(5) Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely for competition or if they become nonroad vehicles or engines; anyone modifying a certified motor vehicle or motor vehicle engine for any reason is subject to the tampering and defeat device prohibitions of paragraph (a)(3) of this section and 42 U.S.C. 7522(a)(3).

Within the rulemaking, the EPA argues that it is simply clarifying longstanding EPA policy. We beg to differ.

As you are aware, Americans have been modifying their vehicles and converting them into racecars for generations. The policy is incorporated in the name “National Association for Stock Car Auto Racing” (NASCAR). Beyond that obvious example, millions of enthusiasts go to a wide variety of tracks every year to race or watch formerly-certified vehicles compete, from sports cars to motorcycles, and everything in-between. This is an important part of our American automotive heritage.

The rule would have a devastating economic impact were it to take effect. Jobs would be lost due to cancelled product sales and installations. Enthusiasts would be deprived of the opportunity to race their modified vehicles. Track events would be cancelled. Individuals and entities ignoring the policy would be exposed to enforcement and civil penalties.

Despite these obvious consequences, no economic analysis was undertaken by the EPA when issuing the proposed rule. The impact on small businesses was also not considered.

Motorsports generate enormous benefits for the American public in the form of new safety, efficiency, and emission technologies that are later incorporated into motor vehicles used on public roads, yet with this rule the EPA imposes regulations that stifle innovation and technological advancement.

Congress, through the Clean Air Act, has already provided the EPA with the tools it needs to enforce against software and auto parts manufacturers that sell products which defeat emissions control systems on vehicles used on public roads. Regulators have also enforced against distributors and retailers of such products. While the EPA has issued a statement that it “has not taken an enforcement action for tampering against a vehicle owner where the owner has proven the vehicle was used exclusively for racing,” that is hardly reassuring. The EPA’s prohibition

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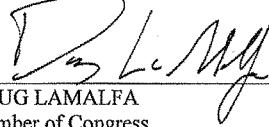
mandate applies to “anyone” who has tampered, including the owner. As described above, this new policy would provide the EPA with sweeping enforcement capabilities that were never intended or authorized by Congress.

Given this background, we respectfully request confirmation that a motor vehicle may legally be modified from its certified configuration into a vehicle used solely for competition. Assuming this is current EPA policy, please confirm that all references to the proposed new policy will be removed from the subject greenhouse gas rule when it is finalized. Conversely, if this is not the EPA’s current policy, please provide justification to counter our contention that Congress has defined otherwise through the Clean Air Act and its legislative history.

We would appreciate your prompt consideration of this request since the EPA is in the process of finalizing the rule. Please do not hesitate to contact us if you have any questions.

Sincerely,


AUSTIN SCOTT
Member of Congress


DOUG LAMALFA
Member of Congress

ONE PAGER ON FEDERAL LAW RE COMPETITION VEHICLES

“Recognizing the Protection of Motorsports Act of 2016” (RPM Act)

The Clean Air Act was never intended to allow the EPA to regulate racecars. However, the U.S. Environmental Protection Agency (EPA) has proposed a rule (Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles--Phase 2, 80 Fed. Reg. 40,138 (July 13, 2015), docket no. EPA-HQ-OAR-2014-0827) to prohibit the conversion of certified motor vehicles into vehicles that will be used solely for competition and the sale of emissions-related parts for use on such converted vehicles. The following is a brief summary of the law and reasons for the RPM Act:

- Motor Vehicle Air Pollution Control Act of 1965: Congress defined the term “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” Congress included “anti-tampering” language, making it illegal for “any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title *prior to its sale and delivery to the ultimate purchaser*” (emphasis added).
- Clean Air Act Amendments: 1970: Lawmakers expand the anti-tampering provision to provide that no person can render the emissions controls inoperative “after such sale and delivery to the ultimate purchaser.” Congress also clarifies that the law does not apply to vehicles manufactured or modified for racing. The clarification was included in the congressional conference committee report.
- Clean Air Act Amendments: 1977: No changes impacting racecars.
- Clean Air Act Amendments: 1990: Congress provides the EPA with the authority to regulate nonroad vehicles/engines. Since the term “nonroad vehicle” could easily have been interpreted to include race vehicles, Congress included language to unequivocally exclude vehicles used solely for competition from the definition of “nonroad vehicle” (“*The term ‘nonroad vehicle’ means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition*”). The fact that Congress separated out “vehicles used solely for competition” from “motor vehicles” in the definition of nonroad vehicle is also instructive, as it indicates the term “motor vehicle” was not understood as covering “vehicles used solely for competition.” It is also noteworthy that Congress referenced racecars as vehicles *used* solely for competition – not vehicles built solely for competition.

RPM Act: It is clear through statute and legislative history that Congress never intended to provide the EPA with authority to regulate vehicles used solely for competition, including vehicles modified to be used exclusively for racing. Despite this clarity, the EPA does not recognize this limitation on its authority. Legislation is necessary to reinforce the mandate. The following two changes to the Clean Air Act would:

- 1) Section 3: Amend the anti-tampering provision (42 U.S.C. 7522) to clarify that removal or alteration of the emission controls of a motor vehicle are not tampering if done for the purpose of converting the motor vehicle into a vehicle that will be used solely for competition. It further clarifies that a vehicle used solely for competition is not subject to the anti-tampering provisions.
- 2) Section 4: Amend the definition of “motor vehicle” (42 U.S.C. 7550) to clarify that it does not include a “nonroad vehicle or a vehicle used solely for competition.”

